

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1306

To be argued by
HERMAN KAUFMAN

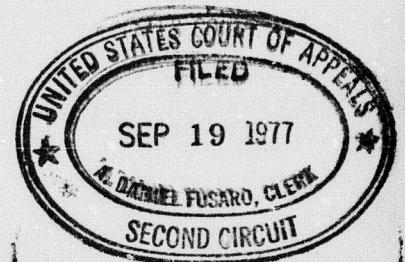
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
- against -
CARL BENEDETTO,
Defendant-Appellant.
-----X

B
P/s

APPENDIX FOR APPELLANT CARL BENEDETTO

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



LITMAN, FRIEDMAN & KAUFMAN
Attorney for Defendant-Appellant
120 Broadway
New York, New York 10005
(212) 349-6750

HERMAN KAUFMAN
JACK T. LITMAN
of counsel

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CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PD ☐ JUDGE/MAGISTRATE ASSIGNMENT ☐
 OTHER MINOR OFFENSE NO ☐ 0208 1 0851
 OTHER MAJOR OFFENSE NO ☐
 FELONY ☐

vs. **BENEDETTO, CARL**

(LAST, FIRST, MIDDLE)

Case File No. **11 09**
 No. of Dets. **01**

76 1035 01

U.S. MAG. CASE NO.

U.S. TITLE/SECTION **21:622** OFFENSES CHARGED **Federal meat inspector accepting money from company engaged in interstate commerce** ORIGINAL COUNTS **1-3**
21:622 **Federal meat inspector accepting money from company engaged in interstate commerce** **1-4**
21:622 **Federal meat inspector accepting money from company engaged in interstate commerce** **1-4**

BAIL - RELEASE
 Denied ☐ AMT ☐ Fugitive ☐
 Set ☐ Para. Recog. ☐
 \$ ☐ 000 ☐ PSA ☐
 Date ☐ conditions ☐
☐ 10% Deposit ☐
☐ Surety Bond ☐
☐ Collateral ☐
☐ Status Changed (See Docket) ☐ 3rd Party Cust. ☐

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Regan ☐ INDICTMENT ☒ INFORMATION ☐ 11-9-76
 Summons Served ☐ Indict. Waived ☐ Superseding Indict./Info ☐ 3-10-77
 First Appearance ☐ In Charging District ☐
 ARRAIGNMENT ☒ 11-18-76 Trial Set For ☐ Vair Dire ☐
 1st Plea ☒ NG ☐ G ☐ NOL ☐
 Final Plea ☐ G Plea W/Drawn ☐
 5-10-77 ☐ NG ☐ G ☐ NOL ☐
 TRIAL ☐ Trial Began ☐ Trial Ended ☐
 SENTENCE ☐ 5-10-77 ☐ 6-23-77
☐ Convicted ☐ On Au. Charge ☐
☐ Acquitted ☐ On Lesser Offense ☐
☐ Dismissed ☐ WOP ☐

MAGISTRATE		OUTCOME	
Search Warrant	Issued ☐ Return ☐	INITIAL APPEARANCE DATE	INITIAL/NO.
Summons	Issued ☐ Served ☐	PRELIMINARY EXAMINATION OR REMOVAL HEARING	Date Scheduled ☐ Date Held ☐
Arrest Warrant Issued		WAIVED ☐ NOT WAIVED ☐	Tape Number
COMPLAINT		INTERVENING INDICTMENT ☐	
OFFENSE (in Complaint)			

U.S. Attorney or Asst.

Lawrence Iason
 791-0042

ATTORNEYS

John Gallagher

* Show last names and suffix numbers of other defendants on same indictment/information

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE (RELAT.)
11-9-76		Filed Indictment.....Cooper, J.	(a) (b) (c) (d)
11-18-76		Def't. present. Def't. given a week to hire atty. Court directs entry of not guilty plea. R.O.R. Referred to Judge Pierce as related to 76 Cr 1027. Cannella, J.	
11-22-76		Reassigned to Judge Cooper.	
3-10-77		Filed Superseding Indictment & referred to Cooper, J.Bryan, J.	
4-28-77		Filed Superseding Indictment & referred to Cooper, J.MacMahon, J.	
5-11-77		Filed government's sentencing memorandum	
5-4-77		Jury trial begun before Cooper J.	
5-5-77		Trial Cont'd	
5-6-77		" "	
5-9-77		" "	
5-10-77		Trial Continued & concluded Jury verdict, the dft. guilty on counts 1,2,3,&4 Jury Polled, Pre-Sentence report ordered Probation notified. Sentence 6/22/77 @10AM..ROR.....Cooper J. (Cont'd)	

FORM AO-746

A.1

A

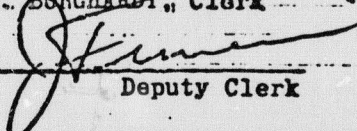
5-10-77 Orig. indictment Nolle Prosequi.....So Ordered Cooper J.
 5-10-77 1st Superindictment Nolle Prosequi.....So Ordered Cooper J.
 6-23-77 Filed Judgment & Commitment (Atty. John T. Gallagher Pres)
 The Dft. is hereby committed to the custody of the atty. gen.
 or his authorized representative for imprisonment for a
 period of EIGHTEEN (18) MONTHS ON EACH OF COUNTS 1,2,3 & 4 to run
 concurrently. Dft. released on his own recognizance pending
 appeal. Dft. advised of his right to appeal.....Cooper J.
 Issued Commitment 7-5-77.
 7-7-77 Filed Notice of Appeal.
 7-14-77 Read transcript of record of proceedings, dated 5-10-77
 6-29-77 Filed Corrected Judgment and Probation/Commitment, atty.
 (John T. Gallagher) present. The deft. is hereby committed
 to the custody of the Attorney General or his authorized
 representative for imprisonment for a period of Eighteen
 (18) Months on each of Counts 1,2,3 and 4 to run concurrently.
 Deft. released on his own recognizance pending appeal
 Deft. advised of his right to appeal.....Cooper, J
 Issued Commitment 7-22-77.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	CD NUMBER	DATE	RECEIPT NUMBER	CD NUMBER

A TRUE COPY

RAYMOND F. BURCHARDT, Clerk

By  Deputy Clerk

A2

LI: sr
11-221

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

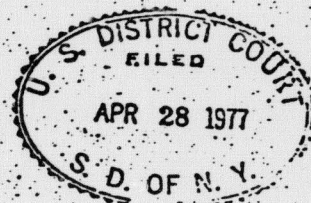
-v-

CARL BENEDETTO,

Defendant.

INDICTMENT

2S 76 Cr. 1035



INTRODUCTION

The Grand Jury charges:

1. The Federal Meat Inspection Act, enacted on December 15, 1967 as Title I of the Wholesome Meat Act, requires the Secretary of Agriculture to provide for the inspection of establishments where meat and meat food products are processed.
2. At all times relevant to this Indictment, the defendant CARL BENEDETTO was an inspector, officer and employee of the United States Department of Agriculture, Meat and Poultry Inspection Program, authorized to perform the duties required by the Federal Meat Inspection Act of 1967.
3. At all times relevant to this Indictment, Western Meat Company, Inc., located at 520 Westchester Avenue, Bronx, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program pursuant to the Federal Meat Inspection Act of 1967.
4. At all times relevant to this Indictment, Plaut & Stern, Inc., located at 524 Westchester Avenue, Bronx, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program pursuant to the Federal Meat Inspection Act of 1967.

A3

5. At all times relevant to this Indictment, Park Packing Corp., located at 536 Westchester Avenue, Bronx, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program pursuant to the Federal Meat Inspection Act of 1967.

6. At all times relevant to this Indictment, Eastern Meat, Inc., located at 601 Brook Avenue, Bronx, New York, was engaged in interstate commerce and was inspected by inspectors, officers and employees of the United States Department of Agriculture, Meat and Poultry Inspection Program pursuant to the Federal Meat Inspection Act of 1967.

COUNT ONE

The Grand Jury further charges:

During the approximate time periods listed below, in the Southern District of New York, the defendant CARL BENEDETTO unlawfully, wilfully and knowingly did receive and accept from Western Meat Company, Inc., money and other things of value, that is, approximately \$20 weekly:

January 22 through April 29, 1972

July 15 through August 5, 1972

December 10 through December 23, 1972

May 13 through July 21, 1973

August 27 through September 15, 1973

October 14 through October 29, 1973

November 1, 2, 19, 23, 26, 27, 28, 29 and 30 1973.

(Title 21, United States Code, Section 622.)

COUNT TWO

The Grand Jury further charges:

During the approximate time periods listed below, in the Southern District of New York, the defendant CARL BENEDETTO unlawfully, wilfully and knowingly did receive and

LI:sr
11-221

accept from Plaut & Stern, Inc. money and other things of value, that is, approximately \$25 weekly:

January 22 through April 29, 1972

July 15 through August 5, 1972

August 20, 22 and 23, 1973

September 6, 1973

October 30 and 31, 1973

November 1, 16, 19, 20, 22, 23, 25, 26, 27, 28,
29, 30, 1973.

March 3 through April 13, 1974

April 28 through July 20, 1974

December 16 through December 27, 1974.

(Title 21, United States Code, Section 622.)

COUNT THREE

The Grand Jury further charges:

From on or about the 3rd day of March 1974, up to and including the 20th day of July 1974, in the Southern District of New York, the defendant CARL BENEDETTO unlawfully, wilfully and knowingly did receive and accept from Park Packing Corp., money and other things of value, that is, approximately \$15 to \$25 weekly.

(Title 21, United States Code, Section 622.)

COUNT FOUR

The Grand Jury further charges:

During the approximate time periods listed below, in the Southern District of New York, the defendant CARL BENEDETTO unlawfully, wilfully and knowingly did receive and accept from Eastern Meat, Inc. money and other things of

LI:sr
11-221

value, that is, approximately \$25 weekly:

July 21 through August 30, 1974

November 18, 1974 through January 3, 1975.

(Title 21, United States Code, Section 622.)

Joseph J. Delaney
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

A TRUE COPY
RAYMOND F. BURGEARDT, Clerk
By [Signature]
Deputy Clerk

A6

6-23-77 Defl. Benedetto sentenced (atty. Pres.
to Eighteen (18) months on each of counts 1, 2,
3 & 4 to run concurrently.
Defl. Released on his own recognizance
Pending appeal. Defl. Advised of his right
to appeal.

S

Cooper, J.

United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

CARL BENEDETTO,
Defendant.

INDICTMENT

2S 76 Cr. 1035

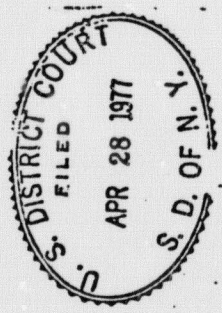
21 U.S.C. § 622

ROBERT B. FISKE, JR.

United States Attorney.

A TRUE BILL

Joseph J. Alderman
Foreman.



Referred to Cooper as being related
to and superseding 76 Cr. 1035
(Cooper)
MacMahon
JUDGE COOPER

APR 28 1977

MICROFILM

Jury Trial begun Before Cooper, Jr.

Trial continued

MAY 5 1977

Trial continued

MAY 6 1977

Trial continued

MAY 9 1977

Trial continued & concluded

MAY 10 1977

Jury Verdict, the deft guilty on counts 1, 2, 3 & 4
Jury Pollled, pre sentence report viewed.
Probation notified
Sentence June 22, 1977 at 10:45 am.

R.O.R.
Cooper, Jr.

1 rg/lf/50 Breth-Direct

2 THE COURT: Here the same thing. You just give
3 them what they are asking for.

4 THE WITNESS: Thank you very much.

5 THE COURT: Thank you.

6 DIRECT EXAMINATION

7 BY MR. LEVITES:

8 Q Mr. Breth, by whom are you employed?

9 A I am self-employed.

10 Q By a corporation, a partnership?

11 A A partnership. I have my son as my partner.

12 Q What is the name of your business, sir?

13 A Arthur Breth and Son.

14 Q What is your business?

15 A Wholesale meat business.

16 Q How long have you been in the wholesale meat business,
17 sir?

18 A Forty-nine years.

19 Q Forty-nine years. How old are you, sir?

20 A Sixty-six. I started when I was seventeen.

21 Q I want to direct your attention to the period
22 between 1972 and 1975. Were you employed at Arthur Breth
23 and Company then?

24 A I was.

25 Q Where were you located, sir?

1 rg/lf/51 Breth-Direct

2 A I was located in the Westchester market in the
3 Bronx.

4 Q Where did you buy your meat from? Where did you get
5 your meat?

6 A Out West. We bought from slaughter houses in the West

7 Q And where did you sell, sir?

8 A We sold our merchandise in our premises on Westchest
9 Avenue.

10 Q Where were your customers located?

11 A My customers were located mostly in the Bronx. We
12 had customers that came from Long Island, because we had easy
13 access to the Triboro Bridge, and we also had a few customers
14 from Jersey.

15 Q Did you have occasion in the operation of your
16 business during the years alluded to to participate in the
17 inspection program of the United States Department of Agricult
18 under the Wholesale Meat Act?

19 A I did.

20 Q Did you have occasion to meet various inspectors
21 of the Department of Agriculture during that period, 1972 to
22 1975?

23 A I did.

24 Q Do you know the defendant Carl Bendetto?

25 A Yes, sir.

1 rg/lf/52

Breth-Direct

2 A Do you see him in this courtroom?

3 A Yes, sir

4 Q Will you please point him out?

5 A I did.

6 THE COURT: What is he wearing?

7 THE WITNESS: A blue jacket.

8 THE COURT: What's on his face?

9 THE WITNESS: A beard.

10 THE COURT: Indicating the defendant on trial.

11 Q Was the defendant one of the inspectors assigned
12 to your plant between the years 1972 and 1975?

13 A Yes, sir.

14 Q Did there come a time when the defendant had a
15 conversation with you with reference to money?

16 A Yes.

17 Q When did that conversation take place? Do you
18 have a date for us?

19 A Several years ago. Possibly three or four years.
20 I can't remember the exact date.

21 THE COURT: Mr. Breth, can you remember the year?

22 THE WITNESS: I'd say '73 or 1974.

23 THE COURT: All right.

24 Q Who, if anyone, was present besides you and the
25 defendant?

1 rg/lf/53

Breth-Direct

2 A Nobody.

3 Q Can you tell us what you said to him and what he
4 said to you?

5 A I can't recollect an exact conversation.

6 Q That's fine, sir.

7 Can you tell us if you gave the defendant any money.

8 A I did.

9 Q How much, sir?

10 A As a rule, \$10.

11 Q Can you tell us on how many occasions you paid the
12 defendant?

13 A Numerous. I couldn't give you the exact.

14 THE COURT: But approximately. You see, the jury
15 shouldn't be left to guess. Is it a hundred times, ten times,
16 three times, what? Approximately.

17 A Ten to fifteen times.

18 THE COURT: Next question.

19 Q Where did this money come from, sir?

20 A My pocket.

21 Q Was it --

22 A I gave out my own money.

23 Q It wasn't the partnership's money, it was your
24 own?

25 A It was my own money.

1 rg/lf/54

Breth-Direct

2 Q It didn't come off the books?

3 A It didn't come off the books, no, sir.

4 Q Do you have an agreement between yourself and the
5 Department of Justice concerning your testimony in this case?

6 A Yes, sir.

7 THE COURT: I'm sorry to interrupt you, especially
8 since counsel on both sides are doing so well; but it seems to
9 me that when a witness says, "I do not remember the exact
10 conversation," you are duty bound to inform him that you are
11 not calling for the exact conversation, has he any recollection
12 whatever of the substance of what was said. If he says no,
13 that's the end of that, but I don't think you ought to have
14 the record show that you failed to follow through.

15 MR. LEVITES: Thank you, your Honor.

16 Q Do you have any recollection of the substance of
17 your conversation with the defendant?

18 A No.

19 THE COURT: Very well.

20 MR. LEVITES: Thank you, your Honor.

21 If I can impose on the clerk, your Honor, for
22 one additional item.

23 This will be Government's Exhibit 24 for identifica-
24 tion.

25 (Government's Exhibit 24 marked for identification.)

1 rg/lf/55 Breth-Direct

2 MR. LEVITES: With counsel's consent, your Honor,
3 I would offer 24 in evidence.

4 MR. GALLAGHER: No objection, your Honor.

5 THE COURT: No objection. Mark it in evidence,
6 please.

xxx 7 (Government's Exhibit 24 received in evidence.)

8 Q I show you Government's Exhibit 24 in evidence.
9 Is this document familiar to you? Take a look at it, sir.

10 A Right.

11 Q Is that your signature on it?

12 A That is.

13 Q Have you read it?

14 A I read it.

15 Q Is that the agreement you have with the United
16 States Government?

17 A That's true.

18 Q What are the terms of the agreement?

19 MR. LEVITES: Your Honor, may I summarize it for
20 the jury?

21 THE COURT: I wish you would.

22 A That I tell the truth.

23 MR. LEVITES: Ladies and gentlemen, Government's
24 Exhibit 24 in evidence is dated April 22, 1977. It is addressed
25 to Mr. Breth's attorney, Mr. Milton E. Sahn. Paragraph one

1 rg/lf/56 Breth-Direct

2 says, "This will confirm our understanding of the conditions
3 under which Arthur Breth and Company will furnish information
4 to the federal grand jury and the U.S. Attorney's office in
5 connection with its investigation into corruption involving
6 the meat industry and the United States Department of Agricul-
7 ture, meat and poultry inspection program."

8 Paragraph two says that Mr. Breth and his company
9 will make full, complete, immediate and truthful disclosure
10 of all information relative to the investigation described
11 in paragraph one. Mr. Breth agrees to truthfully testify
12 as a witness before both any federal grand jury and in any
13 trials and with respect to all relevant information he may
14 possess concerning corruption in the meat industry, in the
15 Department of Agriculture.

16 There is no corporation here and it says, "In return
17 for this truthful testimony, your client, the partnership,
18 its officers, directors, employees or agents will not be
19 prosecuted for payments made by your client to federal meat
20 inspectors. If your client does not tell the complete truth,
21 however, this agreement is void and your client and its
22 officers, directors, employees and agents can be prosecuted."

23 Paragraph four says that the United States Attorney's
24 office agrees, should the need arise, to recommend to the
25 Internal Revenue Service that no criminal charges be instituted

1 rg/lf/57 Breth-Direct
2 against your client as a result of payments made to Department
3 of Agriculture employees.

4 It is signed by myself, by Elkan Abramowitz,
5 the chief of the criminal division, by Mr. Breth and by his
6 attorney, Milton Sahn.

7 BY MR. LEVITES:

8 Q Mr. Breth, during the years 1972 to 1975 when you
9 paid the defendant, did you pay other inspectors?

10 A Yes, sir.

11 Q Have you named them to the U.S. Attorney's office?

12 A Yes, sir.

13 Q Were there also inspectors you did not pay?

14 A Yes, sir.

15 Q Without telling us who they are, do you remember
16 who they were?

17 A Firmly.

18 Q I said without telling us who they are. I am not
19 asking you that. Just do you know.

20 A I do.

21 Q Did there come a time prior to your testimony here
22 and after you paid the defendant when you were questioned
23 by the FBI?

24 A Right.

25 Q Did you tell them of the payments you had made to the

1 rg/lf/58 Breth-Direct
2 defendant and the other inspectors?

3 A No, I lied to them.

4 Q You lied to them?

5 A Right.

6 Q Why did you do that, sir?

7 A I wasn't under oath and I didn't want to become
8 involved and I was a little afraid, I'll tell you the truth.
9 That's all. It was stupid. I made a mistake.

10 Q Thank you very much, sir.

11 THE COURT: Cross.

12 MR. GALLAGHER: May I inquire, sir?

13 THE COURT: Yes.

14 CROSS EXAMINATION

15 BY MR. GALLAGHER:

16 Q Mr. Breth, you have no recollection at all as to
17 when it was that Mr. Benedetto was in your establishment,
18 isn't that correct?

19 A No. It was three, four years ago. I have a
20 recollection, but in that time I wouldn't know the exact date,
21 but I have a recollection.

22 Q You have no recollection of the conversation that
23 you had with Mr. Benedetto shortly after he came to your
24 establishment?

25 A No. I'll be truthful, no.

1 rg/lf/59

Breth-Cross

2 Q Do you know, sir, whether you initiated the conver-
3 sation or whether he initiated the conversation; do you have
4 any recollection as to that?

5 A I don't know who initiated the conversation.

6 THE COURT: No, he just asked you have you any
7 recollection.

8 THE WITNESS: I have no recollection.

9 THE COURT: Then say no. That's all. That's
10 what I talked to you about.

11 Next question.

12 Q Besides the conversation that you had with him
13 prior to the time you gave him \$10 for the first time, did
14 you have any other conversations with him while he was an
15 inspector at your establishment?

16 A I did.

17 Q Do you recall what they were about, sir?

18 A To pass the time -- the weather, generalities.

19 Q Would you have a conversation with him on a daily
20 basis of this nature?

21 A Yes.

22 Q In April of this year, April 22nd to be precise,
23 you entered into this deal with the United States Government,
24 isn't that so?

25 A That's right.

A 18

1 rg/lf/60

Breth-Cross

2 Q By the way, when you gave this \$10 to Mr. Benedetto,
3 you knew that you were violating the federal law, did you
4 not?

5 A It really didn't occur to me. I probably was, but
6 it didn't occur to me. We just did it, that's about all,
7 just not to be harassed, we felt. That's about it.

8 Q Let me ask you this, sir.

9 When you first began, or first participated in this
10 program, the meat inspection program, they gave you certain
11 documents and asked you to familiarize yourself with them,
12 did they not, relative to the program itself?

13 A Right.

14 Q You familiarized yourself with them, did you not?

15 A So?

16 Q Did it indicate in those documents that if you gave
17 money to a federal inspector, that this was a crime?

18 A Probably did.

19 THE COURT: Now wait. Do you remember you said
20 that you were sworn to tell the truth and you were determined
21 to tell the truth, right?

22 THE WITNESS: Yes, sir.

23 THE COURT: Did you have any doubt when you gave
24 Benedetto money that you were giving him a bribe; did you
25 ever have any doubt on that?

1 rg/lf/61

Breth-Cross

2 THE WITNESS: No, sir.

3 THE COURT: As a grown man?

4 THE WITNESS: No, sir.

5 THE COURT: You knew that was contrary to your own
6 faith and the faith of everybody.

7 THE WITNESS: You are right.

8 THE COURT: No matter what their faith is, you
9 knew that, didn't you?

10 THE WITNESS: Yes, sir. You are right.

11 THE COURT: Cut out the holiness here. You knew
12 that it was wrong, but you did it.

13 THE WITNESS: Right.

14 THE COURT: Say so.

15 Q Mr. Breth, as part of the arrangement or deal that
16 you made with the government, you learned, did you not, that
17 having given money to a federal inspector, that you would be
18 subjected to a fine of not less than \$5,000 and a term of
19 imprisonment for not more than one year if you were to go to
20 trial and were convicted?

21 A That's right.

22 Q Instead they let your partnership, as a partnership
23 and as a firm, enter a plea to a lesser crime, isn't that
24 so?

25 A That's right.

1 rg/lf/62

Breth-Cross

2 Q And you on behalf of the partnership entered that
3 plea in this court, did you not, sir?

4 A Yes, sir.

5 Q What's your understanding as to what possible pun-
6 ishment your firm faces as a result of that plea?

7 A As of now?

8 Q As of right now.

9 A A possible fine.

10 Q But you are not going to go to prison and your son
11 isn't going to go to prison, isn't that so?

12 A Right.

13 Q And your firm will be fined?

14 A Right.

15 Q That's the extent of it, that so?

16 A That's right.

17 Q So it's a little more than just you agreed to tell
18 the truth, isn't it?

19 A I had intended to tell the truth when I was called
20 down to the prosecutor's office one way or the other, whether
21 I got the immunity or not.

22 Q What I am asking you, sir, your deal is a little
23 more than just you are going to tell the truth?

24 A I don't understand your question.

25 THE COURT: I think that's argumentative anyhow.

1 rg/lf/63 Breth-Cross

2 A I really don't understand the question.

3 THE COURT: All right, next question.

4 MR. GALLAGHER: I have no further questions to ask
5 of this witness.

6 THE COURT: Let me ask you this before you go.

7 You know full well, don't you, that you may go to
8 jail and that the understanding is all off if you lie before
9 this jury.

10 THE WITNESS: That I knew, sir.

11 THE COURT: And you know, also, if you lied before
12 this jury you would be prosecuted for giving bribes as well
13 as perjury before the jury, you understand that?

14 THE WITNESS: Yes.

15 THE COURT: All right, next question.

16 MR. LEVITES: There is something the government
17 feels an obligation to correct. Your Honor has very
18 clearly stated part of the government's agreement, but I
19 feel defense counsel misconstrued the agreement between the
20 government and Mr. Breth. Since he has a partnership, and a
21 partnership cannot be prosecuted separately, the agreement
22 is complete immunity for Mr. Breth. His company isn't being
23 prosecuted. Since we can't prosecute him we can't prosecute
24 the partnership.

25 THE COURT: You cleared that up very well.

1 rg/lf/157 Lustgarten-Direct

2 DIRECT EXAMINATION

3 BY MR. LEVITES:

4 Q Mr. Lustgarten, by whom are you now employed?

5 A Imperial Veal and Lamb.

6 Q What are your duties with Imperial Veal and Lamb?

7 A Salesman and I manage the main floor there.

8 Q You work at the same company as Mr. Neal who just
9 recently testified as a character witness for the defendant
10 this afternoon?

11 A Yes, sir.

12 I want to direct your attention to the years 1972
13 through 1974. Do you recall that period of time?

14 A Yes, sir.

15 Q Where were you working then?

16 A S.J. Shaffer Company.

17 Q Where was S.J. Shaffer located at that time?

18 A 530 Westchester Avenue, Bronx, New York.

19 Q The Westchester Meat Market?

20 A Right.

21 Q Where are they located now, sir?

22 A They are not in business now.

23 Q During the time you were working at Shaffer and
24 Company, was it participating in the federal meat inspection
25 program pursuant to the Wholesome Meat Act of 1967?

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Lustgarten-Direct

2 A Yes, sir.

3 Q Did you have occasion in connection with that
4 participation to meet various inspectors assigned to the
5 Department of Agriculture?

6 A Yes, sir.

7 Q Do you know the defendant Carl Benedetto?

8 A I do.

9 Q Do you see him in this courtroom?

10 A Yes, I do.

11 Q Would you please point him out.

12 A He is wearing a blue jacket.

13 THE COURT: Indicating the defendant on trial.

14 Q He was one of your inspectors?

15 A Yes, he was.

16 Q Can you tell us to the best of your recollection
17 and ability when he was assigned to S.J. Shaffer?

18 A Between the years '73 and '74. I can't pin it
19 down to the month or which year it was.

20 Q That's your best recollection?

21 A Yes.

22 Q What was your relationship with Carl Benedetto?
23 Was it friendly or unfriendly?

24 A I thought very friendly.

25 Q You liked him?

1 rg/lf/159 Lustgarten-Direct

2 A I did like him. I still do.

3 Q You are here under subpoena, are you not, sir?

4 A Yes, sir.

5 Q Did there come a time when you had occasion to have
6 a conversation with Carl Bendetto about money?

7 A Yes.

8 Q When did that take place? Give us the year, if
9 you can.

10 A 1973.

11 Q Where did that conversation take place, if you know?

12 A In the office of -- in the small office downstairs
13 of 530 Westchester Avenue.

14 Q Who else, if anyone, was present?

15 A No one.

16 Q Would you tell us, as best you can, what you said
17 to the defendant and what, if anything, he said to you.

18 A As far as conversation, no. On occasions I would
19 give him money when he was a late man or a relief man.

20 Q What is a late man, sir?

21 A That's a man who works on the houses that are
22 working overtime in the area.

23 Q Is he regularly assigned on a four or six-month
24 basis to the plant?

25 A Right.

1 rg/lf/160

Lustgarten-Direct

2 Q In other words, he is there every day for four
3 months or six months?

4 A That is correct.

5 Q What is a relief man?

6 A If one gets sick or one is on vacation.

7 Q Then the inspector I take it is there only
8 sporadically?

9 A Right.

10 Q Would you say on various occasions you gave the
11 defendant a sum of money?

12 A Yes, sir.

13 Q How much was that?

14 A \$10.

15 Q Did he accept it?

16 A Yes, sir.

17 Q How did you give it to him?

18 A Cash.

19 Q How did you give it to him, hand it to him in an
20 envelope, crumple it up and shake hands or what?

21 A Crumple it up and shake hands.

22 Q What did you say to him on these occasions and
23 what did he say to you? You must have spoken.

24 A No, not really. It was like a way of life there
25 with inspectors and management.

1 rg/lf/161 Lustgarten-Direct

2 Q In 1973-1974 had you paid other inspectors?

3 A Yes, sir.

4 Q Before the defendant?

5 A Yes, sir.

6 Q And after the defendant?

7 A Yes, sir.

8 Q Did you tell the U.S. Attorney's office about them?

9 A Yes, sir, I did.

10 Q Where did this money come from?

11 A Mr. Shaffer would give it to me to give to the
12 inspectors.

13 Q Did there come a time when you had some additional
14 conversation with the defendant about the amount of money he
15 was being paid?

16 A Yes. And when he came at a steady basis, the
17 last time -- that is for a steady tour of duty, he said, "I
18 am not going to stick my neck out any more for \$10 a week,
19 I want more money." So I said, "You will have to see Mr.
20 Shaffer." From then on he did see Mr. Shaffer. What
21 monies transacted, I do not know.

22 Q Did you have occasion in April of 1977 to be ques-
23 tioned about this matter by the FBI?

24 A Yes, I did.

25 Q Did you tell them the truth?

1 rg/lf/162

Lustgarten-Direct

2 A No, I didn't.

3 Q You lied?

4 A I did.

5 Q Why did you do that, sir?

6 A I did not want to get involved.

7 Q Did they ask you specifically about Mr. Benedetto?

8 A No, they didn't.

9 Q They just asked you in general?

10 A Yes, sir.

11 Q Do you have an agreement with the government
12 about your testimony here today?

13 A Yes, sir.

14 MR. LEVITES: I am showing counsel Government's
15 Exhibit 26 and 26A.

16 May I offer this into evidence?

17 MR. GALLAGHER: No objection. I have copies of
18 both documents.

19 THE COURT: Received.

20 (Government's Exhibits 26 and 26A received in
21 evidence.)

xxx

22 MR. LEVITES: With your Honor's permission, may I
23 summarize this for the jury?

24 THE COURT: Surely.

25 MR. GALLAGHER: Your Honor, may I request that it

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Lustgarten-Direct

2 be read in full, particularly 26, rather than summarizing
3 it?

4 THE COURT: All right.

5 MR. GALLAGHER: I think sometimes we get a dis-
6 torted view.

7 MR. LEVITES: Before I read it, let me show it to
8 the witness.

9 Q What's the difference, if any, between 26 and 26A?
10 Look at these and when did you get each one, if you know.

11 A This was the day when I was summoned in front of
12 the grand jury.

13 Q When you say "this," please refer to it by the
14 exhibit number.

15 A Exhibit number 26A.

16 Q 26 is this top one and 26A is the one fastened
17 underneath.

18 A Right.

19 Q Which one did you receive the day you were first
20 summoned?

21 A 26A.

22 Q When did you get 26?

23 A A day or two later, I believe.

24 MR. LEVITES: I am just going to read 26, the final
25 one, your Honor, but with the Court's permission I will just

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Lustgarten-Direct

2 hold up 26A so they can see it was a rough copy. It just
3 had Mr. Lustgarten's name printed in.

4 25 is a final typed copy of the same agreement,
5 the following day.

6 Government's Exhibit 26 in evidence is dated April
7 7, 1977.

8 "Investigation into corruption involving the meat
9 industry in the United States Department of Agriculture, meat
10 and poultry inspection program.

11 "Dear Mr. Lustgarten:

12 "This will confirm our understanding of the condi-
13 tions under which you agree to furnish information to the
14 federal grand jury and to the United States Attorney's
15 office and its investigative agencies in connection with an
16 investigation into corruption involving the meat industry
17 and the Department of Agriculture meat and poultry inspection
18 program.

19 "Other than the agreements and conditions set forth
20 in this letter, no other promises, agreements or conditions
21 have been made by either the United States or by you.

22 "Two. You agree to furnish full and complete
23 cooperation to the federal grand jury of the Southern District
24 of New York, and to the United States Attorney's office,
25 including immediate, full, complete and truthful disclosure

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Lustgarten-Direct

2 "bf all information relative to the investigation described in
3 paragraph one. You also agree to testify as a witness before
4 any federal grand jury and at any trial or trials or any
5 ancillary proceedings thereto with respect to all relevant
6 information that may be possessed concerning corruption in
7 the meat industry and in the Department of Agriculture.

8 "Three. In return for this truthful testimony,
9 you will not be prosecuted for payments you made to federal
10 meat inspectors. If you do not tell the complete truth,
11 however, this agreement is void and you can and will be
12 prosecuted.

13 "Four. The United States Attorney's office agrees,
14 should the need arise, to recommend to the Internal Revenue
15 Service no criminal charges be instituted against you as a
16 result of the payments made to the Department of Agriculture
17 employees.

18 "Very truly yours, Robert B. Fiske, Jr., United States
19 Attorney."

20 It is signed for Mr. Fiske by Lawrence Iason,
21 Assistant United States Attorney. Approved by Elkan Abramowitz,
22 Chief of the Criminal Division of the United States
23 Attorney's office. Then it is agreed and consented to and it
24 bears Mr. Lustgarten's signature.
25

1 rg/lf/166

Lustgarter.-Direct

2 Q That's the agreement between you and the government,
3 is it not?

4 A That is correct.

5 THE COURT: What do you understand will happen to
6 you if you falsify before this jury and this judge on this
7 occasion, today, the 9th of May, 1977?

8 THE WITNESS: I can be indicted on criminal charges.

9 THE COURT: For what?

10 THE WITNESS: For bribing a government meat inspector.

11 THE COURT: And for what else?

12 THE WITNESS: Perjury.

13 THE COURT: Next question.

14 Q Mr. Lustgarten, when was the last time you had any
15 contact with the defendant Carl Benedetto?

16 A Approximately six weeks ago.

17 Q Who initiated that contact?

18 A Mr. Benedetto.

19 Q What did he say to you?

20 A He would like me to be a character witness for him.

21 Q Were you going to be a character witness for him?

22 A I said yes and then I gave it some thought and I
23 couldn't -- I couldn't perjure myself like that.

24 MR. LEVITES: No further questions.

25 THE COURT: Cross.

rg/lf/167

Lustgarten-Cross

CROSS EXAMINATION

BY MR. GALLAGHER:

Q Six weeks ago you hadn't testified before the grand jury, had you?

A Testified? No.

Q So, in other words, Mr. Benedetto spoke to you before you spoke to the grand jury?

A That is correct.

Q Did he speak to you after you lied to the FBI or before you lied to the FBI?

A Before I lied to the FBI.

Q By the way, where did you speak to Mr. Benedetto?

A In front of where I work, Imperial Veal.

Q What was he doing at Imperial Veal that day?

A Nothing. He just came over to ask me if I would be a character witness.

Q Didn't he go up to see Mr. Neal, your boss?

A Mr. Neal is not my boss.

Q Do you have an office on the third floor of that establishment?

A No, sir.

Q Where is your office located?

A The second floor.

Q Isn't Mr. Neal in charge of that floor?

1 rg/lf/168

Lustgarten-Cross

2 A No, he is on the main floor, right in the front.

3 Q You are a salesman for the company, are you not,
4 sir?

5 A Yes, sir.

6 Q What did you tell the FBI when you saw them and
7 lied to them?

8 A He also met me in front of where I work, in the
9 street. and asked me as a manager did I ever give money to
10 meat inspectors and I said to him, "All I did was manage
11 men." That was my answer.

12 Q Didn't he tell you that you had made payments to
13 an undercover agent?

14 A That is correct.

15 Q He told you that they had an undercover agent
16 working for the United States Department of Agriculture?

17 A That is correct.

18 Q He said you made payments to him, right?

19 A That is correct.

20 Q You denied making those payments, isn't that so?

21 A When he asked me if I made payments, I said all
22 I managed was men. That was my answer and that was the whole
23 conversation.

24 Q Then they asked you to come down and testify before
25 the grand jury?

1 rg/lf/169 Lustgarten-Cross

2 A That is correct.

3 Q That's when you made your deal with the government,
4 isn't that correct?

5 A That's when I decided to tell the whole truth.

6 Q That was so you wouldn't be prosecuted for lying
7 to a federal agent, wasn't it?

8 A That's also correct.

9 Q And so you wouldn't be prosecuted for having been
10 giving bribes, is that correct?

11 A That's correct.

12 Q Did they tell you what the penalty was for lying
13 to a federal agent?

14 A No, sir.

15 Q Or giving a false statement to a federal agent?

16 A No, sir.

17 Q They did tell you, however, didn't they, that the
18 penalty for bribe giving was a fine of not less than \$5000
19 and a term of imprisonment not less than one year? They
20 told you that, didn't they?

21 A No, sir.

22 Q What did they tell you the penalties were?

23 A He didn't tell me any penalties at that time.

24 Q What did he tell you?

25 A That if I told the truth, that I would not be

1 rg/lf/170 Lustgarten-Cross

2 prosecuted.

3 Q But he also told you that you had given a misstate-
4 ment to a federal office, didn't he?

5 A No, he didn't.

6 Q Did he tell you that you had given bribes?

7 A Yes, he did.

8 Q And did he tell you that that was a federal crime?

9 A Yes, sir.

10 Q And you knew that, because when your plant first
11 became inspected there were certain pamphlets that were given
12 to you relative to what happens to you if you give a bribe
13 to a federal office, isn't that so?

14 A No, sir.

15 Q You never knew that it was a crime to give a
16 bribe to a federal meat inspector?

17 A Yes, I did know it was a crime.

18 C How did you know that?

19 A I didn't learn it. I just knew it's a crime to
20 give a government inspector a bribe.

21 Q But nobody, when you made this deal, told you,
22 "Don't worry about it. It's a crime. here is what you can be
23 sentenced to, but we are going to see you won't go to jail,"
24 nobody told you that?

25 A No, sir.

1 rg/lf/171 Lustgarten-Cross

2 Q They also told you, however, did they not, and it
3 was part of the deal, that if the Internal Revenue Service
4 got after you, that they would attempt to straighten it out
5 with the Internal Revenue Service, isn't that so?

6 A No, sir.

7 Q It's not?

8 MR. GALLAGHER: May I have Government's Exhibit 26,
9 please?

10 MR. LEVITES: Sure.

11 Q Would you just read the last paragraph of
12 that exhibit, sir.

13 A You asked me -- the question was if they told me.
14 They did not tell me.

15 Q All I want you to do is would you read that para-
16 graph, sir.

17 A "The United States Attorney's office" --

18 Q No, you can read it to yourself.

19 A Right.

20 Q What did it say there?

21 A I made the deal with the government before I was
22 given this, not knowing what the contents of this letter was.

23 Q You originally made a deal by a letter that's
24 dated sometime in February of 1977, isn't that correct?

25 A That is correct.

1 rg/lf/172

Lustgarten-Cross

2 Q Government's Exhibit 26 in evidence is the same
3 letter, is it not?

4 A That's right.

5 Q It's the same deal?

6 A Yes, sir.

7 Q You made that deal before you agreed to cooperate
8 with the government, isn't that so?

9 A I made the deal the day that I was supposed to go
10 in front of the grand jury.

11 Q Yes, and they told you when you went in front of
12 the grand jury you would have complete immunity, isn't that
13 so?

14 A I would get a letter of immunity, that is correct.

15 Q And, also, you would be immuned from any charges,
16 criminal charges that might be brought by the Internal
17 Revenue Service, isn't that so?

18 A No, he did not state all that. He said I would
19 get a letter of immunity, that's all he stated, if I told
20 the truth.

21 Q Doesn't paragraph four of Government's Exhibit 26
22 say that the United States Attorney's office agrees, should
23 the need arise, to recommend to the Internal Revenue Service
24 that no criminal charges be instigated against you as a
25 result of payments made to the Department of Agriculture employee

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Lustgarten-Cross

2 A That is correct, but I told him I would tell the
3 truth before I got this letter.

4 Q I know you told him you were going to tell the
5 truth and you told the judge you are telling the truth now.
6 I understand that, but before you went in and testified
7 before the grand jury you made the deal, didn't you?

8 A Yes, sir.

9 Q That's all we want to find out.

10 MR. LEVITES: Your Honor, forgive me for interrupting
11 counsel, but I really feel that a portion of the last observa-
12 tions by defense counsel are legally objectionable and should
13 be stricken.

14 THE COURT: I will let it stand and then you will
15 have the right to examine further if you should find the need,
16 and then you really have summation and all those things which
17 will straighten themselves out for sure.

18 MR. GALLAGHER: I will apologize for anything I
19 said in the heat of the moment and I will withdraw it
20 and apologize to the Court.

21 THE COURT: All right, it's withdrawn. Let's go.

22 Q When did you give Mr. Benedetto money for the first
23 time?

24 A The year was 1973.

25 Q What was the occasion?

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Lustgarten-Cross

2 A He was the overtime man.

3 Q Do you recall how long he had been working or
4 inspecting your plant?

5 A No, I don't.

6 Q How long had he been the overtime man?

7 A For the entire week.

8 Q When was it you paid him, at the end of the week?

9 A That's correct.

10 Q Was that a Saturday or was that a Friday?

11 A Friday.

12 Q Saturday is an overtime day as well, is it not?

13 A We did not work Saturday.

14 Q Your plant didn't work on Saturdays?

15 A That's correct.

16 Q When was the next time that you gave him money?

17 A Also when he was the overtime man.

18 Q When was that? Was it the next week or was it
19 ten weeks from then, when?

20 A It could have been ten weeks. I do not know the
21 exact time.

22 Q Did Mr. Shaffer come to you and say, "Carl Benedetto
23 is the overtime man this week. You go down and give him this."

24 A No, I would go to Mr. Shaffer and say, "Carl Benedetto
25 is the overtime man this week. Can I have \$10 to give him?"

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2 Q Was Mr. Shaffer ever present when you gave the
3 money to Mr. Benedetto?

4 A No, he wasn't.

5 Q Was anybody present?

6 A No, sir.

7 Q Every time you gave money to Mr. Benedetto you just
8 crumpled it up and shook hands with him and put it in his
9 hand?

10 A That's correct.

11 THE COURT: Was it always the same amount, Mr.
12 Lustgarten?

13 THE WITNESS: Yes, sir.

14 THE COURT: Next question.

15 Have you a memory as to on how many occasions, and
16 if not exactly, can you give us an approximation of the
17 number of occasions when you gave \$10 to this defendant?

18 THE WITNESS: No, I can't.

19 THE COURT: Was it closer to 50 or closer to five?

20 THE WITNESS: Closer to five.

21 THE COURT: All right, next question.

22 Q Did you ever tell anybody that you gave the money
23 to Mr. Benedetto in an envelope?

24 A I don't remember if I did or if I didn't.

25 Q When Mr. Shaffer used to give you the money, did he

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Lustgarten-Cross

2 crumple it up and put it in your hands or did he give it to
3 you in an envelope or did he just put his hand into his pocket
4 and take out \$10 and say, "Here, go down and give this to
5 Carl."

6 A It could have been occasions where he did put it
7 in an envelope. Most of the times I did crumple it up and
8 put it in his hand.

9 Q When it was in an envelope, how would you give it
10 to him?

11 A I would fold it up and hand it to him.

12 Q You would fold up the envelope?

13 A That is correct.

14 Q And did you put money in the envelope or did Mr.
15 Shaffer put it in the envelope?

16 A Mr. Shaffer.

17 Q So on those occasions you don't know what was in
18 the envelope, isn't that so?

19 A That is correct.

20 Q When you testified before the grand jury, were you
21 asked who you gave money to?

22 A Yes, sir.

23 Q Then you just recited a litany of the names of
24 those individuals you gave money to, isn't that so?

25 A No, sir. I was shown pictures before and asked to

1 rg/lf/177 Lustgarten-Cross

2 point out which inspectors I gave money to.

3 Q I am talking about when you testified before the
4 grand jury.

5 A They also showed me pictures of the meat inspectors,
6 various meat inspectors.

7 Q They showed you pictures at the grand jury?

8 A Yes, sir.

9 Q Before they showed you the pictures, did you name
10 the individuals whom you claim you gave money to?

11 A Before?

12 Q Yes.

13 A No. After they showed me the pictures.

14 Q In the grand jury did you name the individuals
15 before you were shown the pictures or after you were shown the
16 pictures?

17 A After I was shown the pictures.

18 Q Isn't it a fact, sir, that the United States
19 Attorney who presented this matter to the grand jury named
20 for you several inspectors and said, "Didn't you pay these
21 inspectors money?" and you said, "Yes."

22 A I had a group of pictures in front of me when I said
23 that.

24 Q I am not talking about pictures. I am asking you
25 if the United States Attorney didn't ask you did you pay

1 re/lf/178 Lustgarten-Cross

2 money to these inspectors and he read off a list of inspectors
3 and you said yes?

4 A No.

5 Q Let me ask you this, and I am reading from the grand
6 jury minutes, page six, in the middle of the page, line twelve.
7 Do you recall being asked these questions and giving these
8 answers:

9 "Q And you gave those envelopes to
10 meat inspectors?

11 "A That is correct."

12 "Q Did you give those envelopes or cash to
13 the following meat inspectors: Mike Grasso, Carl Benedetto" --
14 and he mentioned two other inspectors -- and then the question
15 continues, "Did you give it to them?"

16 Do you recall being asked that question and giving
17 that answer?

18 A Yes, sir.

19 Q Then on page eight, which is two pages later,
20 do you recall being asked this question:

21 "Q You also showed me the photograph of Mr.
22 Benedetto. Do you remember that?

23 "A Yes."

24 Do you remember being asked that question and giving
25 that answer?

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2 A Yes, sir.

3 Q "Q Whom you had identified by name even
4 before looking at the photographs?

5 "A That's correct."

6 Do you remember being asked that question and
7 giving that answer?

8 A I don't remember it.

9 Q In any event, when you went into the grand jury,
10 you didn't go in there and give them a litany of names, all
11 you did was respond yes to a question that was asked of you
12 by the United States Attorney, isn't that so?

13 A No, sir.

14 Q Would you like me to reread --

15 THE COURT: Wait a minute. The government is stand-
16 ing up. A representative of the government rather.

17 MR. LEVITES: Perhaps I misheard, your Honor, but
18 I don't think the witness ever said that he ever gave a litany
19 of names.

20 THE COURT: Do you know what the word "litany"
21 means?

22 THE WITNESS: No, I don't, your Honor.

23 Q A list of names.

24 THE COURT: That's better.

25 Would you reframe your question.

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Lustgarten-Cross

2 Q Isn't it so, sir, that the United States Attorney,
3 in questioning you before the grand jury, mentioned four
4 names to you and said did you give money to these -- either
5 monies or an envelope which you believed contained money, to
6 the following inspectors, and then he named four inspectors of
7 which Mr. Benedetto was one?

8 A That is correct.

9 Q If Mr. Shaffer gave you money to give to a
10 inspector or gave you an envelope to give to an ~~inspector~~
11 which you believed to have contained cash, would ~~Mr. Shaffer~~
12 know whether or not you actually turned it over ~~to the~~ ~~inspec~~

13 A No, he wouldn't.

14 MR. GALLAGHER: I have no further questions.

15 THE COURT: All right. Anything further?

16 MR. LEVITES; Yes, your Honor, I have ~~one~~
17 additional exhibit, the photos in question that ~~show~~
18 to the witness.

19 THE COURT: Yes.

20 MR. LEVITES: As soon as they arrive ~~back~~
21 can conclude very expeditiously. The agent will ~~be~~
22 a minute or two.

23 THE COURT: There are no questions ~~that~~ ~~are~~
24 you?

25 MR. LEVITES: I can ask one or two other

1 rg/lf/181 Lustgarten-Redirect

2 will just bear with me one second.

3 THE COURT: Surely.

4 REDIRECT EXAMINATION

5 BY MR. LEVITES:

6 Q Mr. Lustgarten, isn't it a fact that after you had
7 testified you gave money to the defendant, Carl Benedetto,
8 in the grand jury while you were being prepared for trial, you
9 tried to soften that testimony?

10 MR. GALLAGHER: Objection, your Honor, to the
11 characterization, if nothing else.

12 MR. LEVITES: All right.

13 THE COURT: You withdraw the question?

14 MR. LEVITES: No, I will change the question, your
15 Honor. I mean I will withdraw it and rephrase it.

16 THE COURT: All right, you withdraw the question.

17 Q Did you come to the United States Attorney's
18 office after you testified in the grand jury that you had
19 given the defendant money -- did you come to the United
20 States Attorney's office and attempt to alter that testimony
21 by saying you had only discussed giving the defendant money,
22 is that correct?

23 A That is true.

24 Q Why did you do that, sir?

25 A Because of my friendship towards Carl, I did not want

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2 to hurt him, but in good conscience I can't do anything else
3 but to tell the truth.

4 MR. LEVITES: Could we have one very brief side
5 bar, your Honor?

6 THE COURT: Surely.

7 (At the side bar)

8 MR. LEVITES: Your Honor, I feel I have an ethical
9 obligation to bring to defense counsel's attention the follow-
10 ing fact: until Mr. Lustgarten took the stand today, I,
11 frankly, did not know how he was going to testify, for reasons
12 which I think are apparent. I had Mr. Shaffer in to see
13 whether he could corroborate or otherwise illustrate Mr.
14 Lustgarten's testimony. Mr. Shaffer's statements to me were
15 that he had given Mr. Lustgarten money on numerous occasions
16 to pay inspectors and that he remembers Carl Benedetto as
17 having been one of the inspectors who was paid during the time
18 period, although he was not present, but his testimony --
19 he didn't testify, but his story differed from Mr. Lustgarten's
20 in that while Mr. Lustgarten said that there came a time
21 when Benedetto tried to raise the price and he sent him to
22 Shaffer, Shaffer said he did not recall that event and thought
23 that he most probably would have recalled that event. He
24 said it was possible that it had occurred, but he did not
25 think it did and all he could say was that he had given money

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Lustgarten-Redirect

2 to Lustgarten to pay the inspectors. To the extent that the
3 government knows of a witness whose testimony is in some
4 measure inconsistent with what I now hear, I am perfectly
5 willing to make available to Mr. Gallagher, if he so desires,
6 Mr. Shaffer's whereabouts here in New York and he can bring
7 him tomorrow. I personally don't think it's of great utility
8 because of what I told you but that decision should be his.

9 THE COURT: You are perfectly right in calling that
10 to our attention.

11 MR. GALLAGHER: I am not interested in that. I
12 didn't cross examine in that area because of some other
13 reasons.

14 What I would like to know, and maybe it's better
15 off the record.

16 THE COURT: Discussion off the record.

17 (Discussion off the record)

18 (In open court)

19 MR. LEVITES: Your Honor, this will be Exhibit
20 27. I will mark it in evidence as I understand defense
21 counsel has no objection.

22 THE COURT: Is that right, Mr. Gallagher?

23 MR. GALLAGHER: I have no objection and I am
24 willing to concede that if the witness is shown certain pictures
25 he will select the picture of Mr. Benedetto.

1 rg/lf/184 Lustgarten-Redirect

2 MR.. LEVITES: That is not the purpose of the
3 government's offer.

xxx 4 (Government's Exhibit 27 received in evidence.)

5 Q I want to show you Government's Exhibit 27 in
6 evidence. Do you recognize this? Just look through a few.
7 I am not asking you to identify the defendant.

8 A I don't believe this is the one I was shown. I
9 was shown a shorter group of pictures.

10 Q Were you?

11 A Yes, I was.

12 THE COURT: I wonder whether this isn't much ado
13 about nothing. Both sides admit that photographs were shown
14 to the witnesses. That's a very common way of getting down
15 to brass tacks as to who it is that a witness claims took
16 money and so forth. What is the problem, really? They
17 both admit photographs were shown. Mr. Gallagher wants to
18 emphasize that it was only after he was shown pictures that
19 he included this defendant -- that still remains a possible
20 argument and you can maintain for your side by way of argument
21 to the jury that that was just a reinforcement of what he had
22 said. What's all this about?

23 MR. LEVITES: I concur, your Honor, and so with
24 your Honor's permission and Mr. Gallagher's, perhaps I will
25 do the following: in view of the witness' inability to remember

1 rg/lf/185

Lustgarten-Redirect

2 the group of photos that he looked at, I will withdraw 27
3 from evidence.

4 THE COURT: Withdrawn.

5 I will simply ask the witness the following question.

6 As you sit there in the witness box under oath today
7 and look at the defendant, is there any doubt in your mind
8 whatever, let me ask you are you absolutely sure that that's
9 the man you gave money to?

10 A Yes.

11 MR. LEVITES: Thank you.

12 THE COURT: Do you want to take back anything you
13 said under oath before this judge and this jury?

14 THE WITNESS: No, your Honor.

15 THE COURT: Any single item, minor or major or
16 incidental or positive, what about it?

17 THE WITNESS: No, sir.

18 THE COURT: All right.

19 MR. GALLAGHER: Your Honor, very briefly, sir.

20 THE COURT: Surely.

21 RECROSS EXAMINATION

22 BY MR. GALLAGHER:

23 Q Sir, how long have you known Mr. Benedetto?

24 A Approximately four years on and off.

25 Q Have you ever socialized with him, sir?

1 rg/lf/186

Lustgarten-Recross

2 A No, sir.

3 Q Have you ever gone to his home?

4 A No, sir.

5 Q Has he ever gone to yours?

6 A No, sir.

7 Q Have you ever had dinner with him?

8 A No, sir.

9 Q Have you ever had drinks with him?

10 A No, sir.

11 Q You say that you went down and tried to change your
12 testimony in the United States Attorney's office by saying
13 that you only discussed giving money with Mr. Benedetto be-
14 cause he was such a good friend of yours, is that your
15 reason?

16 A Yes, sir. I do spend ten hours a day working with
17 the man, too.

18 Q He was such a good friend that you wanted to go
19 in and change your testimony?

20 A Yes, sir.

21 Q Then did the District Attorney or the United States
22 Attorney tell you that if you tried to change your testimony
23 not only would he bring up these charges that you had already
24 received immunity for, but you would also suffer a penalty --
25 excuse me, that you would also subject yourself to a penalty

1 rg/lf/187. Lustgarten-Recross

2 of perjury, did he tell you that?

3 A No. He told me if that's the truth, then tell it
4 that way.

5 Q So today then you changed your mind again and you
6 decided to say that you actually gave him money, is that right?

7 A Not today. I thought about it a lot, counselor,
8 an awful lot.

9 Q But a few weeks ago you were going to say that you
10 only discussed giving money with him and now you come in
11 today and say yes, you gave him money?

12 A That is correct.

13 MR. GALLAGHER: Thank you, sir.

14 THE COURT: Is there anything else?

15 MR. LEVITES: No, your Honor. The final detail,
16 as you know, your Honor, I had alluded to a particular piece
17 of demonstrative evidence which Mr. Gallagher has looked at
18 over the luncheon recess and I would just like to have it
19 marked now so I can refer to it tomorrow if counsel has no
20 objection.

21 MR. GALLAGHER: I have no objection but I assume
22 it's just going to be marked for identification, not in evi-
23 dence, so you can use it tomorrow.

24 THE COURT: You mean you want to show it to the jury?

25 MR. LEVITES: I believe everything on that chart has

1 rg/lf/92 Benedetto-Direct

2 the stand.

3 THE COURT: Very well.

4 C A R L B E N E D E T T O, the Defendant, called
5 as a witness in his own behalf, being first duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. GALLAGHER:

9 Q Mr. Benedetto, can you tell us where you live,
10 please.

11 A 1837 25th Road in Astoria.

12 Q How long have you been living there?

13 A A year.

14 Q How long have you been living on 25th Road in
15 Astoria?

16 A 25 years.

17 Q How old are you, sir?

18 A Thirty-six.

19 Q Are you married?

20 A Yes.

21 Q Do you have any children?

22 A Two. Two boys.

23 Q What are their ages?

24 A Ten and four months.

25 Q Can you tell me, sir, how far did you go in school?

1 rg/lf/93

Benedetto-Direct

2 A Second year high.

3 Q What school did you attend?

4 A The New York School of Printing.

5 Q How long have you been an inspector, sir?

6 A Almost nine years.

7 Q What is your present status with the United States
8 Department of Agriculture?

9 A I am a G.S.-8, fifth step.

10 Q Are you presently working?

11 A I am suspended.

12 Q When were you suspended, sir?

13 A December 4th.

14 Q What did you do before you became an inspector for
15 the United States Department of Agriculture?

16 A I was a meat cutter.

17 Q A meat cutter?

18 A Yes.

19 Q How long were you a meat cutter before you became
20 an inspector?

21 A Six years.

22 Q And before that were you in any other line of work?

23 A Yes. Construction to a mail clerk. I did a lot of
24 different types of jobs.

25 Q You finally became a meat cutter and then thereafter

1 rg/lf/94

Benedetto-Direct

2 you became an inspector, is that correct?

3 A For security. It is a more secure job.

4 Q Where did you work as a cutter, sir?

5 A In the 14th Street area.

6 Q Did you work in one house or various houses?

7 A One house.

8 Q What is the name of that?

9 A Knickerbocker Meats.

10 Q Are they still in business today?

11 A No.

12 Q You have been here all throughout the trial, isn't
13 that correct?

14 A Right.

15 Q And you have heard all the witnesses who testified?

16 A Right.

17 Q Did you ever take any money or any gratuities from
18 anybody in Western Meat?

19 A No.

20 Q Did you ever take any money or gratuities from any-
21 body in Park Packing?

22 A No.

23 Q Did you ever take any money or gratuities from
24 Plaut & Stern?

25 A No.

1 rg/lf/95

Benedetto-Direct

2 Q Did you ever take any monies or gratuities from
3 anybody at Eastern Meat?

4 A No.

5 Q Did you ever take any money or gratuities from
6 Arthur Breth and Company or Arthur Breth and Son?

7 A No.

8 Q Are you telling me now, sir, that these individuals
9 who testified, Mr. Staiman, Mr. Daitch, Mr. Langsam and
10 Mr. Hirsch, Mr. Breth, Mr. Peskin, who testified to day,
11 they were mistaken when they said that you took money?

12 A That's right. I caused them to spend money.

13 Q How did you cause them to spend money?

14 A By fixing up their operations.

15 Q Did you ever at any time, either knowingly or other-
16 wise, harass any of those individuals who testified that you
17 took money from them?

18 A I don't harass nobody. I just do my job.

19 Q Tell me this, sir. If you are found not guilty
20 by this jury and you are permitted by the Department of Agricul-
21 ture to go back to your job, is it your intention to go back
22 to your job as an inspector?

23 A Right.

24 Q Prior to your being indicted in the federal court,
25 have you ever been convicted of a crime?

1 rg/lf/96

Benedetto-Direct

2 A No.

3 Q Have you ever knowingly or unintentionally passed
4 any unsanitary or unwholesome meat?

5 A No.

6 Q The individual witnesses who testified against you
7 testified that you worked in their plants at certain times
8 and on certain days, is that correct?

9 A That's right..

10 Q To the best of your knowledge, did you work in those
11 plants during those periods of time?

12 A That's for sure. Definitely.

13 Q So far as your recollection is concerned, and the
14 way we have been able to go back through your records,
15 you did work in those particular plants on those particular
16 days, isn't that correct?

17 A Right.

18 Q In those plants you had dealings with the various
19 individuals from those plants, isn't that correct?

20 A Right.

21 Q Did you ever say to Mr. Feskin that you know we
22 get paid every week?

23 A No.

24 Q Did you ever take \$20 from Mr. Peskin?

25 A No. It is not allowed.

A 58

1 rg/lf/97

Benedetto-Direct

2 Q Did you ever take any money from Mr. Peskin?

3 A No.

4 Q Did you ever take any money from Mr. Peskin in the
5 presence of Mr. Daitch?

6 A No.

7 Q Did you ever give any money to Mr. Daitch in the
8 presence of Mr. Peskin?

9 A No.

10 Q Did you ever receive anything from Mr. Daitch in
11 an envelope?

12 A The only thing I received from him was the 404 and
13 that's a form that I had to collect every Monday. That's
14 the only time I come in contact with them in the office.

15 Q Did you ever collect anything from Mr. Peskin in
16 an envelope?

17 A No.

18 Q By the way, did you ever have any dealings with
19 Mr. Peskin while you were working in Park Packing?

20 A As a meat inspector?

21 Q Yes.

22 A Right.

23 Q What was his function in Park Packing?

24 A He worked in the cooler.

25 Q And as such, what were his duties?

1 rg/lf/98

Benedetto-Direct

2 A To see if everything runs right. If the meat is
3 good, if all the men are equipped with equipment and they are
4 all clean before they start their operations in the morning.
5 So that's when I was there, like, in the morning when I hit
6 them like around six. I would just check for sanitation.
7 If it wasn't up to par they wouldn't operate. They always
8 complained about they didn't have no hot water, and we need
9 hot water in our industry to keep all the equipment cleaned.
10 That was one of the main problems I had with all of them, no
11 hot water.

12 Q When you say all of them, are you talking about
13 the establishments in the Westchester area?

14 A Just sanitation.

15 Q Did you ever tell Mr. Staiman that this is Friday,
16 let's have it?

17 A No.

18 Q Did you ever have any conversation with Mr. Staiman
19 along those lines?

20 A Yes. The day I closed him up for two hours, he
21 threatened me -- he called me names' and he called me a graft
22 taker and that's when I got my supervision to -- I just couldn
23 stay there no more because I couldn't take his bull shit,
24 I just couldn't do it. I had a lot of trouble with him.
25 He ran a filthy operation and I just got sick of it.

1 rg/lf/99

Benedetto-Direct

2 Q When you say he threatened you, what did he do?

3 A He cursed me out.

4 Q That's not threatening you.

5 A He said that I was graft taking and you are going
6 to get in trouble because you are stopping me too much. I
7 told him I am not afraid of anything he says, but they all
8 threatened me. They all tried to scare me.

9 Q Let's just stay --

10 A But I am sitting here, you're not.

11 Q Carl, the judge told you as he told all of the
12 other witnesses, you listen to the question and answer them.

13 How did he threaten you?

14 A With his mouth.

15 Q Did he say you were taking graft?

16 A That's the only way we can get in trouble, by
17 them bull shitting like that. You had to treat them with kid
18 gloves, but I just got sick of it.

19 Q Carl, did you ever take any money from Harry
20 Langsam?

21 A No.

22 Q Did you ever have any private conversations with
23 him --

24 A Dealing with money?

25 Q In the cooler wherein you said to him --

rg/lf/100

Benedetto-Direct

A No.

Q Are you taking care of the inspectors?

A No.

Q Did you ever receive any money directly from Mr.
Langsam?

A No.

Q Did you ever have any conversations with Mr. Hirsch?

A Yes.

Q Did you ever have any conversations relative to him
giving you money every week?

A No.

Q In order for his business to continue?

A No.

Q Did you ever take any money from Mr. Hirsch?

A No.

Q Since you first became an inspector some nine
years ago, have you ever taken any money from any of the
establishments which you inspected?

A No. You can't do your job if you do that.

MR. GALLAGHER: I have no further questions of this
witness.

THE COURT: Cross.

1 rg/lf/101 Benedetto-Cross

2 CROSS EXAMINATION

3 BY MR. LEVITES:

4 Q Mr. Benedetto, you have read the indictment, have
5 you not, sir?

6 A Yes.

7 Q I take it from your examination in chief that you
8 are testifying under oath, that everything alleged in the
9 indictment is true, except that you took money; in other words,
10 that you were a meat inspector during the period alleged in
11 the indictment --

12 A Yes.

13 Q -- and that you were at the plants as a meat
14 inspector during the periods alleged in the indictment.

15 A The dates I don't know too much about because I
16 was on relief a year. I was all over the Bronx.

17 Q Do they seem approximately right to you?

18 A I couldn't say.

19 Q Didn't you just say in your examination in chief --
20 and we can have the record reread for you if you like, but
21 it was my impression that you said yes --

22 A I am not denying that I wasn't there, I was there.

23 Q All right, sir.

24 I take it that during your tenure as an inspector
25 at these different establishments you had occasion from time

1 rg/lf/102

Benedetto-Cross

2 to time to be alone in the office with the various
3 owners of these establishments, did you not, because of your
4 duties?

5 A Definitely.

6 Q So you had occasion from time to time to be alone
7 with Mr. Staiman, either in the cooler or in the office at
8 one time or another.

9 A You see, my office was upstairs and he was on the
10 main floor.

11 Monday I would go in there for a form, the 404 -
12 that's the tonnage that they do for the week, and it's
13 recommended by the government to collect it every week.
14 That's the only time I walk in their office, because I have
15 no business in there.

16 Q I understand.

17 A Only if I have a problem.

18 Q But you did from time to time, whether it was
19 because of a problem --

20 A Yes.

21 Q And was the same true of Mr. Langsam, did you have
22 occasion to be from time to time alone with him in connection
23 with your official duties?

24 A Yes.

25 Q A problem would come up?

1 rg/lf/103

Benedetto-Cross

2 A Yes.

3 Q And is the same true for Mr. Hirsch?

4 A Yes.

5 Q At Eastern.

6 A Yes.

7 Q Is the same true for Mr. Daitch and Mr. Peskin at
8 Park?

9 A Yes.

10 Q Mr. Breth of Arthur Breth and Company?

11 A Usually his son was there because he didn't want
12 to know too much about what I had to say to him anyway. He
13 was too busy making money -- I mean making his business run,
14 I had to talk to his son, about construction wise of the company
15 to fix up areas.

16 Q You said something during your examination in chief,
17 you said in response to a question by your counsel that these
18 five men or six men are mistaken in their testimony.

19 A Right.

20 Q Are you telling the Court and jury that they are
21 lying intentionally --

22 A That's right, right.

23 Q Let me finish.

24 You are saying that they are lying, not that they
25 are mistaken?

A 45

1 rg/lf/104

Benedetto-Cross

2 A They are lying.

3 Q So it is not as if they are making a mistake
4 about your identity or there is any confusion about who you are?

5 A They are trying to get even with me, that's all.

6 Q I understand that, sir; I am just trying to --

7 A No, you don't understand that. I cost them money.

8 I cost them not \$10, but thousands of dollars because their
9 operations were not up to par.

10 Q I take it you were a tough inspector; fair but
11 tough?

12 A No. A good inspector.

13 Q Well, you enforced the rules vigorously?

14 A Right.

15 Q Without favor or fear?

16 A Right.

17 Q Did you treat everybody equally?

18 A Right.

19 Q I take it that you insisted on a reasonably high
20 standard of sanitation?

21 A That's right.

22 Q You have been an inspector for how long, sir?

23 A Nine years.

24 Q During your nine years as an inspector, did you
25 ever take anything of value from any of the meat packers in

1 rg/lf/105

Benedetto-Cross

2 the business? Did you ever take any money, let's start with
3 that.

4 A No.

5 Q Never.

6 You never took any meat, did you?

7 A No.

8 Q Did you ever take a bottle of liquor at Christmas-
9 time?

10 A No.

11 Q Did you ever let them buy you meals?

12 A Maybe coffee.

13 Q So in nine years as a meat inspector --

14 A That's right.

15 Q The only thing you ever took was a cup of coffee.

16 A No, I didn't take it.

17 Q You didn't take it?

18 A They offered coffee.

19 Q And you didn't accept it?

20 A Yes.

21 Q So then in your nine years you never took anything
22 of value?

23 A That's right.

24 Q Is it your testimony, sir, that the only thing you
25 were ever offered during nine years as an inspector was a cup

1 rg/lf/106

Benedetto-Cross

2 of coffee? Did any of these people ever offer you
3 any money?

4 A Definitely.

5 Q Who offered you money, sir?

6 A All of them.

7 Q Which ones, sir?

8 A Anyone. All that pointed a finger at me.

9 Q Which ones, Mr. Hirsch offered you money?

10 A Right.

11 Q And Mr. Staiman offered you money?

12 A Right.

13 Q Did Mr. Daitch and Mr. Peskin?

14 A Yes. They think all the inspectors are the same,
15 you see.

16 Q I understand that.

17 A No, you don't understand that.

18 Q Let me finish my question so you can be careful
19 of what you say.

20 A All right.

21 Q So each of the witnesses who has testified against
22 you here in this court offered you money, is that your testi-
23 mony?

24 A More or less, right.

25 Q I don't want to put words in your mouth, Mr. Benedetto

A 68

1 rg/lf/107

Benedetto-Cross

2 I don't want more or less, just tell me did Mr. Hirsch ever
3 offer you money in connection with your duties as a meat
4 inspector; yes or no, sir?

5 A Yes.

6 Q Did Mr. Stalman of Western ever offer you money
7 in connection with your duties as a meat inspector, yes or
8 no?

9 A Yes.

10 Q Did Mr. Daitch of Park Packing, in connection with
11 your duties as a meat inspector ever offer you money?

12 A Yes.

13 Q Did Mr. Langsam of Plaut & Stern, in connection
14 with your duties as a meat inspector, ever offer you money?

15 A Yes.

16 Q I take it that as a tough by-the-book inspector --

17 A No. If I was going by the book they wouldn't be
18 operating.

19 Q To whom did you report these illegal offers of
20 bribes?

21 A My supervisor.

22 Q Who was that, sir?

23 A Mr. Hilburg.

24 Q You reported to Mr. Hilburg?

25 A That's right.

1 rg/lf/108

Benadetto-Cross

2 Q Your supervisor?

3 A Right.

4 Q I take it you filled out some written forms and
5 memos that would be in the files to this effect. That's
6 the procedure, is it not, sir?

7 A Right, I did that. I wrote out forms.

8 Q You know that your attorney Mr. Gallagher subpoenaed
9 all the records from the Department of Agriculture.

10 A They seem to be missing.

11 Q I see.

12 Mr. Hilburg, he is the supervisor who is dead now?

13 A That's right.

14 Q What about Mr. McAvoy, he was your supervisor, too.
15 As a matter of fact, some of the acts alleged were after Mr.
16 Hilburg died. Who did you report it to when people offered
17 you money after Mr. Hilburg died?

18 A I didn't report it all the time because I didn't
19 want to get them in trouble. I just wanted to do my job,
20 that's all.

21 Q You knew, sir, when you took your oath that you had
22 an obligation --

23 A Yes, right, but we are working there, we are working
24 there. We are working there every day. I am there every day.
25 I don't want to put nobody out of business, I want to keep the

1 rg/lf/109 Benedetto-Cross

2 business going because that makes my job.

3 Q Weren't you concerned, sir, that these individuals
4 who had offered you money if you didn't report it and cover
5 yourself would some day allege, as you assert they have here,
6 that, in fact, you took money?

7 A That was my mistake, right.

8 Q You knew that it was a violation of your oath not
9 to report these offers of money to you.

10 A No, I didn't know that.

11 Q You didn't know you had an obligation to do that?

12 A No.

13 Q You did not know after nine years as a United States
14 Department of Agriculture meat inspector --

15 A For bribery, for bribery.

16 Q Sir, please. I'll try not to interrupt your
17 answer, let me ask the question.

18 A Yes.

19 Q You didn't know after nine years --

20 A I did know. I knew.

21 MR. GALLAGHER: Objection, your Honor. That's the
22 third time he was asked.

23 THE COURT: Yes, but he has the witness on cross
24 examination. He has a right to pursue it.

25 Objection overruled.

1 rg/lf/110

Benedetto-Cross

2 Q All I want to know, Mr. Benedetto --

3 A I am not a good meat inspector. If I was a top
4 meat inspector, I would have reported them.

5 Q I am not talking about --

6 A That's why I didn't report them.

7 Q Are you through with your answer, sir?

8 I am not talking about whether you were good or
9 bad --

10 A That's what you are trying to put out here. I
11 don't know what you are trying to do.

12 Q I am talking about whether you are honest or
13 dishonest.

14 A I am honest.

15 Q Did you know Inspector Lionelli?

16 A Yes.

17 Q Did you know Inspector Bopp?

18 A Yes.

19 Q Do you know Inspector Rannazzisi?

20 A Right.

21 Q You are friendly, I take it, with some of your fellow
22 inspectors?

23 A Just on a day-to-day basis.

24 Q You used to take meals with them from time to time?

25 A Occasionally, right.

1 rg/lf/111

Benedetto-Cross

2 Q It would be occasionally when you would have a
3 drink with them after work?

4 A Not necessarily.

5 Q I didn't ask "necessarily," I asked if you ever took
6 a drink.

7 A No.

8 Q You knew, I take it, of the corruption among some
9 of your fellow inspectors; knew that even if you weren't
10 taking, some of them were?

11 A I don't think like that.

12 Q You were an inspector for nine years?

13 A Right.

14 Q And you have heard the testimony in this courtroom,
15 have you not, from the various people who accuse you.

16 A Right.

17 Q I take it you heard them testify that they paid
18 numerous other inspectors as well as yourself.

19 A Right.

20 Q Are they out to get all those other inspectors,
21 too?

22 A You're damn right.

23 Q So to your knowledge no inspector ever took any
24 money?

25 A That's right, that's right. To my knowledge, that's

1 rg/lf/112 Benec J-Cross

2 right.

3 Q No inspector ever discussed with any other associate
4 in your presence the amount of money that was being taken in
5 or who was getting what from whom or which house gave what,
6 that never occurred?

7 A No.

8 Q In nine years, not once, did it ever come to your
9 attention that one of your colleagues was corrupt, not once?

10 A I heard some slight things about some guys, that they
11 were lax in their jobs, but not taking graft.

12 Q So then you know nothing of this regular system of
13 payoffs that you have heard described.

14 A I didn't understand that.

15 Q You heard --

16 A That's daily talk. That's daily talk in the market.

17 Q Among whom, sir?

18 A Among everybody that's in the market, the packers
19 and -- you are always under investigation on my job. Some-
20 body is always looking at you, so if you don't walk a straight
21 line, you are not going to have a job for long.

22 Q Mr. Benedetto, you say it's daily talk in the market.
23 Who was the talk among, among the dealers or among the inspector

24 A I don't know. It's like I'm an inspector so I must
25 have a lot of meat at home. That's how some people are, they

1 rg/lf/113 Benedetto-Cross

2 talk like that.

3 Q Mr. Benedetto, I am only asking you one thing, sir.

4 I am asking you if you knew --

5 A No, I didn't.

6 Q You say you knew nothing?

7 A No, I didn't, no.

8 Q Of course, if you had known, you would have turned
9 those people in, isn't that true?

10 MR. GALLAGHER: Objection, your Honor.

11 THE COURT: Objection overruled.

12 A No.

13 Q You would have turned them in if you knew?

14 A No, sir.

15 Q You wouldn't have turned them in?

16 Let me give you a hypothetical.

17 A Yes.

18 Q Suppose it had come to your attention that one of
19 your colleagues was taking money from Mr. Hirsch or Mr.
20 Staiman or Mr. Langsam, would you have turned him in?

21 A No.

22 MR. GALLAGHER: Your Honor, could we have a side
23 bar? I object and I would like it on the record.

24 THE COURT: All right, side bar.

25 (At the side bar)

1 rg/lf/114

Benedetto-Cross

2 THE COURT: Come on into the robing room because
3 I think I know what's on your mind.

4 (In the robing room)

5 THE COURT: Mr. Gallagher has the floor.

6 MR. GALLAGHER: Your Honor, the question is a
7 hypothetical question that assumes facts not in evidence.
8 He asked this witness whether or not he knew any other inspectors
9 that were taking bribes and the witness said no and now he
10 says if you knew, would you have reported him. I submit,
11 sir, that's improper.

12 THE COURT: It is not. It goes to the quality of
13 the morality of the defendant. If he has asked you and you
14 say you have never heard of any corrupt practices by your
15 fellow officers and he said no; and then if you had heard of
16 any would you have done anything about it, and his answer is
17 the customary answer that has plagued all of us in public
18 life for centuries in almost every country, the answer is, "No,
19 I wouldn't, I wouldn't telltale on him no matter what he did."
20 That's a very, very common question and a very, very common
21 answer. It takes the unusual citizen to say, "I'll be damned
22 if I am going to be in any enterprise where its reputation
23 is belittled by the grafter. I will not graft and I am
24 going to expose him." How many American citizens do those
25 things? They know it's wrong, but they are either participants

1 rg/lf/115

Benedetto-Cross

2 themselves or they are quiet observers of it and they do
3 nothing to expose it. How many cases do the judges have
4 where witnesses, who beheld everything in commission of a
5 crime, do not come down at all to testify, and even when they
6 do, they cut their truth into bits. No, I'm sorry, but I
7 would have to rule that this is admissible. So your objection
8 is overruled.

9 Now, is there anything else that we can do at this
10 time, because I don't want to hold up the jury, it doesn't
11 look right.

12 MR. LEVITES: Yes. This is something that I fully
13 intended to take up with your Honor because it is sensitive,
14 there is no question about it.

15 I have independent good faith basis to ask the
16 defendant whether or not he was -- and this goes obviously to
17 an act of moral turpitude and it is also the government's
18 theory as to what he did with the money. Both Mr. Staiman,
19 who you heard testify, but I did not elicit it from him on
20 direct, and Arthur Ruemelly, who was an informant who I
21 think your Honor may be familiar with from one other case,
22 I don't know, but Mr. Ruemelly --

23 THE COURT: I do not.

24 MR. LEVITES: He was put in as an informant inspector.
25 He was a convicted criminal who became an informant for various

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Benedetto-Cross

2 agencies. They put him in as an inspector. They specially
3 trained him in the Midwest and his job was to make cases
4 against the meat dealers. He was going to turn in whoever
5 offered him money. Mr. Ruemelly told me of a conversation
6 in which the defendant told him --

7 THE COURT: This defendant?

8 MR. LEVITES: This defendant, Mr. Benedetto, asked
9 him where he, Benedetto, could acquire some cocaine and some
10 marijuana because, as the witness said, he doesn't drink and
11 he wanted to know where he could score. Then Mr. Staiman
12 also said that Benedetto had tried, he believed, to sell
13 employees at the plant --

14 THE COURT: Staiman testified to this before us?

15 MR. LEVITES: I didn't try to elicit this from
16 Staiman because I felt it would have been improper but now
17 the defendant has taken the stand. I think it is at least
18 something to consider. He testified that not only did he
19 tell me that Benedetto tried to sell to his employees and
20 they reported this to him, but at the time Benedetto closed
21 him down for two hours, that Benedetto was high as a kite.
22 His pupils were dilated and he giggled. You will recall on
23 the stand he said he giggled and said, "You will never guess
24 what I am going to do for you." I certainly realize this has
25 a prejudicial impact, but the fact is -- and I will go on and

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Benedetto-Cross

2 tell your Honor that Mr. Ruemelly went on to recount the
3 rest of the conversation, which I certainly intend to ask the
4 defendant about, and I am just informing the Court, that what
5 Benedetto said was, "You make sure that you get your actions
6 every week because I get my action every week and you make
7 sure you get yours. Just because these bastards give us a
8 few dollars doesn't mean we can't close them down if they get
9 too far out of line."

10 There I think clearly I am entitled to ask him
11 if he -- I have a good faith basis for that, but as to the
12 drug part, I have two witnesses who say that this man purchased
13 and used cocaine and I think that's what he did with his money,
14 frankly, but I am bringing it out; it has to do with his
15 willingness to break the law and it's an act of moral
16 turpitude. The question is whether it's too prejudicial
17 for your Honor to allow and if your Honor tells me it is too
18 prejudicial I certainly won't persue it.

19 MR. GALLAGHER: You say you have witnesses who say
20 he purchased? From what you said, you never mentioned any
21 witness who said this man purchased marijuana, cocaine or
22 anything else.

23 MR. LEVITES: Ruemelly said that Benedetto asked
24 Ruemelly, "Do you know where I can get it?"

25 MR. GALLAGHER: That's not the same as purchasing it.

1 rg/lf/118

Benedetto-Cross

2 THE COURT: If the defendant says no, what are you
3 going to do, call Ruemelly?

4 MR. LEVITES: No, it's a collateral matter. I
5 wouldn't pursue it. I am bound by his answer.

6 THE COURT: Then all you expect to do is get a
7 favorable answer when you ask him whether or not he uses
8 drugs or has ever used drugs, is that what you want to do;
9 is that what you mean?

10 MR. LEVITES: Yes.

11 THE COURT: Then if he says no, what are you going
12 to do?

13 MR. LEVITES: I consider myself bound, it's a
14 collateral matter and I would not feel free to persue it.

15 THE COURT: What do you say?

16 MR. GALLAGHER: I don't know what the answer is.
17 I do know that he doesn't drink, though.

18 THE COURT: There is that. That issue has been
19 resolved. That's as far as you are going to go with it.

20 MR. LEVITES: May I say, "Do you use cocaine?"

21 THE COURT: Not only have you, in the present,
22 but in the past, and if he says yes, you may pursue it within
23 limits. After all, you are asking me to give you a prognosis
24 of what to do in the event the context of the testimony
25 develops in one of 50 different directions. How do I know?

1 rg/lf/319 Benedetto-Cross

2 I can't anticipate. In other words, in one setup of testimony
3 it would be admissible and you could pursue it and in others
4 you have to refrain.

5 MR. LEVITES: What I intended to do was this, your
6 Honor. I intended to ask him if he used drugs and if he
7 said no, I intended to ask him if he knew Arthur Ruemelly
8 and isn't it a fact that he and Arthur Ruemelly had a conversa-
9 tion about that.

10 THE COURT: No, I don't think so.

11 MR. LEVITES: Then I will ask him didn't he and
12 Arthur Ruemelly have the conversation about bribe taking.
13 Clearly that's admissible.

14 THE COURT: You can ask him whether he knows
15 Arthur Ruemelly and in what way does he know him. Then
16 we'll see what develops. Again, I can say that it all depends
17 on the kind of answers you are going to get.

18 MR. LEVITES: The only thing I will ask about the
19 drugs is, "Do you use them?" and then if he says no, that's
20 it.

21 MR. GALLAGHER: May I have a clarification with
22 respect to that? You mentioned cocaine. Are you talking
23 about cocaine or marijuana or both?

24 MR. LEVITES: Both, but I consider marijuana of minor
25 consequence.

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1 rg/lf/120

Benedetto-Cross

2 MR. GALLAGHER: I didn't feel the jury --

3 THE COURT: You said before you have no objection
4 to his asking the witness about whether he does or has ever
5 used cocaine.

6 MR. GALLAGHER: If you are going to use cocaine,
7 I have no objection to that at all. In all honesty, I have
8 no knowledge at all of that.

9 MR. LEVITES: That's fine, Judge.

10 THE COURT: Did you achieve what you wanted to
11 achieve?

12 MR. LEVITES: Yes, I just wanted to alert the Court.

13 THE COURT: All right.

14 (In open court)

15 THE COURT: All right, that having been resolved,
16 please go forward with your questions.

17 BY MR. LEVITES:

18 Q Mr. Benedetto, let me repeat my last question to
19 you.

20 The question was: had you had knowledge that one
21 of your colleagues was improperly accepting money from a meat
22 packer in connection with his official duties, would you have
23 done anything about it, would you have turned him in?

24 A I probably would talk to him about it.

25 Q Would you have reported it to your superiors?

1 rg/lf/121

Benedetto-Cross

2 A I don't think so.

3 Q Certainly you understand that not to do so would be
4 a violation of your oath; you understand that, that you took
5 an oath to see that the laws of the United States are --

6 A That's for my ownself, me.

7 Q You have testified that Mr. Hirsch and Mr. Staiman
8 and Mr. Langsam, the people in the indictment, offered you
9 money. Did any other meat packers offer you money that you
10 didn't report?

11 A I don't recollect. I don't remember.

12 Q I am not asking you who they were.

13 A No, I just don't remember. I try to get that out
14 of my -- if you are always thinking about that, you're not
15 going to do your job, so you don't think about that.

16 Q But you said earlier, sir, that you reported it
17 to Mr. Hilburg.

18 A That's when I closed him down for two hours for
19 cursing me out.

20 Q Who is "him," sir?

21 A Western Meats.

22 Q Mr. Staiman?

23 A Right. He never moved out of that chair. He was
24 always worrying about his customers, but not the product.
25 There were awful conditions in there and I was completely sick

1 rg/lf/122 Benedetto-Cross

2 about it and I stopped him.

3 Q Mr. Benedetto --

4 A And I'll do it again, too.

5 Q You testified he called you a graft taker.

6 A And he called me a lot of names, too.

7 MR. LEVITES: Your Honor --

8 THE COURT: It's my motto never to interfere with
9 a defendant unless it's beyond -- way beyond the scope.

10 The defendant is here to offer himself by way of testimony
11 in his defense. You have got to remember there is a certain
12 amount of tension, this, that and the other, so I just don't
13 interfere. I think you have got to navigate as best you can.

14 MR. LEVITES: Thank you, Judge.

15 THE WITNESS: Thank you.

16 Q Isn't that a strange thing, for someone to call a
17 man who has never even taken a cup of coffee as an insult?

18 A That's right. That's why the man is -- I don't
19 think he is a man anyway.

20 Q That's why he is what, sir?

21 A I don't know what he is.

22 Q I mean, you had never taken anything he had offered
23 you according to your own testimony.

24 A It's his attitude about people. He thinks the people
25 working for him are slaves, he thinks I am going to be a slave.

1 rg/lf/123 Benedetto-Cross

2 He thinks money can buy everything, but money can't buy every-
3 thing sometimes.

4 Q Was Mr. Hirsch the same way?

5 A He is different. He had his business in the morning
6 and he cleaned the place when he wanted to clean it. When I
7 told him to clean it, he would get upset.

8 Q Is Mr. Langsam the same way?

9 A Yes.

10 Q Is Mr. Daitch the same way?

11 A Definitely.

12 Q Was Mr. Peskin the same way?

13 A It's all one breed of people. They are just looking
14 out to make the buck and get rid of the meat. They don't
15 care what condition it goes out. I know because I work with
16 them and they need inspection and they don't want inspection
17 and that's why I am here.

18 Q All of these people got together and conspired
19 to name you falsely?

20 A Damn right.

21 Q You heard them testify, did you not, that they
22 received their immunity whether they named you or not.

23 A They are just getting even with me. They didn't
24 like for me to run their business.

25 Q You would never, I take it, knowingly overlook an

1 rg/lf/124

Benedetto-Cross

2 unsanitary condition, at least not more than once; is that
3 true, sir?

4 A I would overlook?

5 Q Would you ever knowingly overlook an unsanitary
6 condition?

7 A No, sir.

8 Q Isn't it a fact that in August Mr. Barry, your
9 supervisor, went to Imperial Veal and Lamb?

10 A That's right.

11 MR. GALLAGHER: Can we fix the time?

12 MR. LEVITES: August 24, 1976.

13 MR. GALLAGHER: Your Honor, I am going to object.
14 That's a time period not covered by the indictment.

15 THE WITNESS: That's all right.

16 THE COURT: What are you going to say to that?
17 What does the government say?

18 MR. LEVITES: The witness has testified as to certai
19 behavioral patterns on his part and has supplied a motive
20 as to why the people have accused him, have done so falsely.

21 THE COURT: Objection is overruled. You may
22 press your question.

23 Q Isn't it a fact that on August 24th, while you
24 were assigned to Imperial Veal and Lamb, the same company
25 from which Mr. Neal, your character witness came, that

1 rg/lf/125 Benedetto-Cross

2 your character witness came, that Mr. Barry visited Imperial
3 Veal and Lamb and observed condensation throughout the ceiling
4 in the boning and fabricating room upstairs? Isn't that a
5 fact? Didn't that occur?

6 A It wasn't condensation, it was from the clean-up
7 crew. Condensation problem is when there is pipes.

8 Q Excuse me, sir. Was there water on the ceiling?

9 A From the clean-up crew, right.

10 Q Did Mr. Barry point this out to you on August 24,
11 1976?

12 A Yes.

13 Q Did he bring it to your attention?

14 A Yes.

15 Q And tell you to take the required action and reject
16 the area? Didn't he --

17 THE COURT: You are not getting answers. You are
18 rushing forward. He said yes in the middle of your question.
19 Please, Mr. Witness. Wait till the question is finished and
20 then you answer.

21 THE WITNESS: I'm sorry. , -

22 Q Didn't Mr. Barry ask you if you knew that operations
23 should not be permitted under a ceiling with water; didn't
24 he ask you that question?

25 A Yes.

1 rg/lf/126

Benedetto-Cross

2 Q Didn't you acknowledge that you knew that they
3 should not be permitted?

4 A Right.

5 Q Didn't you agree on August 24th to take the
6 necessary action after Mr. Barry explained and instructed you
7 to do so?

8 A I did.

9 Q On August 26th, two days later, didn't Mr. Puchta,
10 who testified here in this case, and Mr. Barry visit the same
11 establishment, Imperial Veal and Lamb?

12 A Mr. Puchta. Yes, I had a problem with him, too.

13 Q Sir, I don't mean to cut you off, but please answer
14 the question. Didn't Mr. Puchta and Mr. Barry, two days
15 later, come back to the Imperial Veal and Lamb Company?

16 A Right.

17 Q Didn't they both see the same condensation on the
18 ceiling in the upstairs fabricating cooler?

19 A No.

20 Q They didn't?

21 A No.

22 Q Didn't Mr. Puchta and Mr. Barry both caution you
23 again about the condition?

24 A Yes.

25 Q And didn't they explain the seriousness of the

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1 rg/lf/127

Benedetto-Cross

2 condensation over product zone areas?

3 A I know the seriousness.

4 Q But did they explain it to you two days later?

5 A Yes, they did.

6 Q Didn't they instruct you again to take the necessary
7 action; that it was your duty and responsibility to see that
8 the product should not be processed?

9 A Right.

10 Q Didn't they bring these incidents to the attention
11 of Inspector Basso who is your union representative?

12 A That was like a set-up job.

13 Q I am asking you if that occurred.

14 A Right, right.

15 Q Two days after that, on August 28th, on a Saturday,
16 didn't Inspector McLane, the assistant circuit supervisor,
17 make an odd-hour inspection at establishment 2719, Imperial
18 Veal and Lamb, and didn't he find again very bad condensation
19 problems over the boning area?

20 A No.

21 Q He didn't?

22 A No.

23 Q Weren't you written a letter --

24 A That's right, and I told him about it, too.

25 Q Sir, please.

1 rg/lf/128

Benedetto-Cross

2 Weren't you written a letter by assistant supervising
3 Inspector Barry in September of 1976 telling you that you
4 were neglecting your responsibilities because of what I just
5 described?

6 A Right.

7 Q And warning you that should you continue to neglect
8 your responsibilities, he also recommended necessary charges
9 be filed against you?

10 A I was ready to fight against them, too, but Mr.
11 Barry said not to say anything because nothing will be said
12 about it.

13 Q You mean Inspector McLane did not come that Saturday?

14 A Yes, sir.

15 Q He didn't show up?

16 A Yes, he did.

17 Q And he didn't find condensation?

18 A No, he found a wet floor.

19 Q But he wrote you a letter saying he found bad conden-
20 sation over the boning table. Mr. Barry wrote you a letter
21 saying that, didn't he?

22 A Yes.

23 Q I will show it to you.

24 A Yes, I saw it.

25 THE COURT: He says yes.

1 rg/lf/129

Benedetto-Cross

2 Q But you say that letter is untrue?

3 A Right.

4 Q What response did you make?

5 A I was going to fight it with the union, but we don't
6 have a chance with supervision. They have the last word.

7 Q Mr. Benedetto --

8 A I am telling you like it is. I am telling you the
9 truth. If you don't want to hear it, then I'm not going to
10 say nothing.

11 THE COURT: Hold it. Will you come up here, please.

12 (In the robing room)

13 (Discussion off the record in the robing room)

14 (In open court)

15 THE COURT: Won't you please continue.

16 Q Again, Mr. Benedetto, did Inspector McLane visit
17 Imperial Veal and Lamb Company on October 28, 1976, and find
18 an unsanitary condition of one kind or another?

19 A No. No. I am the inspector there. In my eyes
20 it wasn't unsanitary, because if it was unsanitary, it wouldn't
21 be operating.

22 Q You enjoyed, I take it, a broad degree of discre-
23 tion --

24 A That's right.

25 Q -- in deciding what was unsanitary and what wasn't?

1 rg/lf/130

Benedetto-Cross

2 A Right.

3 Q In deciding what to do about it?

4 A I know what to do about it.

5 Q Have you ever used drugs, Mr. Benedetto?

6 A What kind of drugs?

7 Q What kind have you used?

8 A What are you trying to say?

9 Q I am asking you a question. Have you ever used
10 drugs?

11 A What does that have to do with anything? What does
12 that have to do with this case?

13 Q Would you break the law knowingly, sir?

14 A No, I wouldn't break the law knowingly.

15 Q I am repeating my question. Have you ever used
16 drugs?

17 A No.

18 MR. GALLAGHER: Can we have a clarification of what
19 the government means by "drugs"?

20 THE COURT: Yes, indeed.

21 A Cough syrup, maybe, I don't know. I don't know
22 what you mean.

23 Q Cocaine?

24 A Have you?

25 Q Have you ever used --

1 rg/lf/131 Benedetto-Cross

2 THE COURT: All right, next question, please.

3 MR. LEVITES: I don't believe I received an answer,
4 your Honor.

5 THE COURT: Then put the next question.

6 Q Have you ever used cocaine, sir?

7 A No.

8 THE COURT: Next question.

9 Q Do you know Arthur Ruemelly?

10 A Do I know --

11 Q Yes, do you know who he is, sir.

12 A I heard about him.

13 THE COURT: Do you know him if you see him?

14 THE WITNESS: No, I don't think I remember him.

15 MR. LEVITES: With your Honor's permission, he could
16 be brought in.

17 THE COURT: All right, certainly.

18 MR. LEVITES: Would you ask Mr. Ruemelly to step
19 out of the witness room and stand here for a minute.

20 THE COURT: What is your name, sir?

21 MR. RUEMELLY: Ruemelly, Arturo.

22 THE COURT: Do you see this man here, Mr. Witness?
23 Do you see him? Mr. Witness?

24 THE WITNESS: Yes, sir.

25 THE COURT: Do you know him?

1 rg/lf/132

Benedetto-Cross

2 THE WITNESS: No, I don't know him.

3 THE COURT: All right, step out.

4 Before I forget, the jury will understand that you
5 are never to accept as a fact that which is incorporated in
6 a question to which there is a negative answer. So when a
7 witness is asked, as this witness was, about cocaine, you
8 are not to gather anything from the question because you
9 remember the answer was no. Do I make myself clear?
10 That's important to remember, that facts incorporated in a
11 question do not become the facts in the case unless they are
12 admitted.

13 Very well.

14 Q You said you heard of Mr. Ruemelly.

15 A I think I met him once. I met him once. If he
16 is the same -- he doesn't look the same, he changed, but I
17 met him once.

18 Q Did you have a cup of coffee with him?

19 A Right.

20 Q Was he an inspector?

21 A Yes.

22 Q Isn't it a fact that on the occasion when you met
23 Mr. Ruemelly, when he was newly assigned as an inspector,
24 you told him to make sure that he always got his action,
25 that you always got your action every week and that he should

1 rg/lf/133

Benedetto-Cross

2 remember that just because those bastards, meaning the
3 people who owned the meat companies, were giving you a few
4 bucks a week, didn't mean you couldn't close them down if they
5 got too far out of line; isn't it a fact that you said that
6 to Arthur Ruemelly, isn't that true?

7 A No, it's not true.

8 MR. LEVITES: On second, your Honor?

9 THE COURT: Surely.

10 Q Can you tell us why, if you know, Inspector McLane
11 lied like this in this letter?

12 MR. GALLAGHER: Objection, your Honor.

13 THE COURT: Objection overruled.

14 Do you know what he is talking about, Mr. Benedetto?

15 THE WITNESS: Yes, I know.

16 THE COURT: He wants to know can you tell us why --

17 THE WITNESS: Could I explain something, your Honor,
18 about that?

19 THE COURT: Go ahead.

20 A Mr. Barry came to me on the 24th and he said that
21 Mr. Puchta is coming around to check out a plant with a
22 veterinarian. Once in awhile we have like interviews -- we
23 bring a new vet and we show him the operations. I told him
24 I will try to straighten out the plant for him. So I did.
25 He said something about the condensation. It wasn't a conden-

1 rg/lf/134

Benedetto-Cross

2 sation problem, it was from the clean-up crew, which, at that
3 time, I had a trainee with me. He was just on the job a month,
4 so I would have to train him. So I would bring him to the
5 areas and I would show him the defects. This condensation
6 problem was from the clean-up crew, they wouldn't wipe it down
7 after they clean up, they just take off. So Mr. Barry pointed
8 it out to me, I corrected the problem; Mr. Puchta, when he
9 walked through the plant -- I don't know, he has something
10 against me because I one time had a run-in with him when he
11 was an inspector, not a supervisor, he was an acting super-
12 visor and he wanted to show me he was tougher than me. He
13 told me to take down tags and I would fight him on every one
14 of them. That's why I don't get along with Mr. Puchta.

15 Mr. Barry is just a supervisor. He is just taking
16 orders from Mr. Puchta. It goes right down the line. You
17 break that wave and you will have waves all the time. I
18 am always on the outside, like.

19 THE COURT: So what you are saying is that Barry --

20 THE WITNESS: He is only doing what he is told, your
21 Honor.

22 THE COURT: That's what you are saying, but what
23 he is told to do is not the truth, is that what you are
24 saying?

25 THE WITNESS: Not necessarily.

1 rg/lf/135

Benedetto-Cross

2 THE COURT: In this particular instance.

3 THE WITNESS: There was water in the area, but,
4 you know, sometimes they overdo it.

5 THE COURT: Show him the letter, please. That
6 will be marked for identification.

7 MR. LEVITES: This will be Government's Exhibit 25
8 for identification.

9 (Government's Exhibit 25 marked for identification.)

10 THE COURT: Who is the writer of that 25 for
11 identification?

12 MR. LEVITES: Mr. Barry.

13 THE COURT: I wanted to make sure.

14 And what is the date of the letter?

15 MR. LEVITES: September 8, 1976.

16 THE COURT: Take a look at that, did you get that
17 letter?

18 THE WITNESS: Yes, sir.

19 THE COURT: Take a look at that. Please take
20 your time, Mr. Witness.

21 Did you get that letter?,

22 THE WITNESS: Yes, your Honor.

23 THE COURT: What in that letter do you say is not
24 true? Are there certain things in that letter, just yes or no?
25 Don't tell me what they are, but does that letter contain state-

1 rg/lf/136 Benedetto-Cross

2 ments that are not true, yes or no?

3 THE WITNESS: Yes, your Honor.

4 THE COURT: All right, next question.

5 Q Which statements are untrue, sir?

6 THE COURT: No.

7 A You are neglecting your duties in --

8 THE COURT: Wait a minute. I didn't ask that be-
9 cause it wasn't in evidence.

10 MR. LEVITES: I'm sorry, your Honor.

11 THE WITNESS: I'm sorry, your Honor.

12 THE COURT: Do you want to offer it? It's up to you.

13 MR. LEVITES: Yes.

14 THE COURT: All right, show it to Mr. Gallagher.

15 MR. LEVITES: He has had a copy, your Honor.

16 THE COURT: All right. Any objection, Mr. Gallagher?

17 MR. GALLAGHER: No objection other than the objection

18 I made before as to the line of questioning and the date,
19 your Honor.

20 THE COURT: All right, it will be received.

xxx

21 (Government's Exhibit 25, received in evidence.)

22 THE COURT: Now I don't want to take over, but I
23 started this particular phase and let me finish it.

24 Take a look at 25 for identification, Mr. Benedetto.

25 Just read to us what you say under oath are false statements

1 rg/lf/137

Benedetto-Cross

2 or is a false statement or are false statements.

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Just read just that part.

5 THE WITNESS: Yes.

6 "You are neglecting your responsibilities."

7 He said that he was going to make charges on me
8 and then right then and there I walked away from him --

9 THE COURT: Do you see how you are branching away?
10 I asked you to look at a paper --

11 THE WITNESS: It's a lie, your Honor.

12 THE COURT: We will come to that later. Just tell
13 us what in that Exhibit 25 was false. You told us one.

14 THE WITNESS: The condensation problem was false.

15 THE COURT: What statement does he say in that
16 letter that you say is false?

17 THE WITNESS: All right.

18 "The seriousness of the condensation over the
19 product zone," if it was a serious condition, your Honor --

20 THE COURT: Be a good fellow, will you? Please,
21 just read what you say is false. Don't discuss it.

22 THE WITNESS: Yes.

23 THE COURT: Just read what you say is false --

24 THE WITNESS: The whole damn thing is false.

25 THE COURT: In that 25 in evidence.

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Benedetto-Cross

2 THE WITNESS: The seriousness of the condensation
3 problem over the area.

4 THE COURT: What else, if anything, is false?

5 THE WITNESS: These past incidents brought to
6 my attention.

7 THE COURT: Anything else?

8 THE WITNESS: And he found a very bad condition of
9 condensation problem over the boning table.

10 THE COURT: Anything else?

11 THE WITNESS: No.

12 THE COURT: All right.

13 Read the letter to the jury, please.

14 (Government's Exhibit 25 in evidence read)

15 Q Mr. Benedetto, what response, if any, did you make
16 to this letter?

17 A I complained to my supervisor about it.

18 Q Who was that, sir?

19 A Mr. Barry.

20 C Yes, sir.

21 Q That the conditions were corrected, they would put
22 more fans in there, that I had extra men come in in the morning
23 to wipe down the ceilings after the clean-up crew. That
24 was the condensation problem. In the letter, where Mr. Puchta
25 saw condensation was near the doorway -- on the outside of the

1 rg/lf/139 Benedetto-Cross

2 door it was 90 degrees and on the inside it was 50, which
3 causes condensation when the door opens. That's the condensa-
4 tion problem he was talking about, not over the boning table,
5 and that's why I was going to fight that letter, but I was
6 told not to. Like an idiot I didn't and it's still on my
7 record, which I am going to fight for that, too. It doesn't
8 belong there.

9 Q You have told us about Mr. Puchta and Mr. Barry.

10 A Yes.

11 Q What about Inspector McLane?

12 A He found water on the floor.

13 Q Why did he describe it as a very bad condensation
14 area then?

15 A I only met the man once and I told him, "If you are
16 going to write something about me, I want to write something
17 about you." Because he wanted them to stop the operation
18 in an unsanitary manner and I refused to do it.

19 Q Did you ever take any money or anything of value
20 from the owners of Imperial Veal and Lamb?

21 A No.

22 Q Of that establishment?

23 A No.

24 Q When Mr. Stalman called you a grafter, there was
25 no basis in fact for that?

1 rg/lf/140

Benedetto-Cross

2 A No. He called me a lot of dirty names that
3 I wouldn't say.

4 Q But you, sir, were one of the few inspectors
5 according to your testimony that he offered money and you
6 didn't take it, but yet he called you a grafter.

7 A That's right.

8 Q You described this letter that you were set up by
9 Mr. Puchta. What do you mean, sir?

10 A Well, we go by steps, we go by steps. Let me ex-
11 plain to you about my job. You take orders. If you don't
12 take the orders, they will harass you and this letter is
13 a harassment from my department, that they are harassing me,
14 because my standards of inspection is different than theirs.
15 Mine is higher and they don't like when I make waves.

16 Q If it's higher --

17 A That's right.

18 Q How can you explain this letter, sir, Government's
19 Exhibit 26 or 25 in evidence, the letter I just read?

20 A When I am an inspector nine years and you are going
21 to lie against me, then I feel sorry for you.

22 Q Do you know Herman Lustgarten?

23 A I met him.

24 Q He works at Imperial Lamb and Veal, doesn't he,
25 sir?

1 rg/lf/141

Benedetto-Cross

2 A Right. A very nervous fellow. A very nervous
3 fellow.

4 Q Does he work at Imperial Veal and Lamb?

5 A Yes.

6 Q The same place that Mr. Neal, one of your character
7 witnesses, works?

8 A Right.

9 Q Do you enjoy a good relationship with Mr. Lustgarten?

10 A I just know him by inspector plant relationship.

11 Q Is he a truthful man?

12 A He is a mixed-up man.

13 Q Is he truthful, sir?

14 A I don't know.

15 Q Didn't you ask him to be one of your character
16 witnesses at this trial?

17 A No, he asked me. He says, "Anytime you want me to
18 testify for you, I'm here," but it seems something happened,
19 somebody scared him or something. I don't know, I really
20 don't know what happened there.

21 Q Didn't you arrange to have an investigator from
22 your attorney's office contact Mr. Lustgarten?

23 MR. GALLAGHER: Objection, your Honor. There were
24 no such arrangements made and I will state that. I made the
25 arrangements, sir.

1 rg/lf/142

Benedetto-Cross

2 THE COURT: All right.

3 Q Didn't you supply the name of Mr. Lustgarten to
4 your attorney as a potential character witness for you?

5 A I supplied all the names of the fellows --

6 THE COURT: He already explained to you that he
7 wanted him as a character witness and then Lustgarten didn't
8 want to come. That's what the witness testified to.
9 He doesn't deny trying to get Lustgarten as a character
10 witness.

11 Q Isn't it a fact, sir, during the time Mr. Lustgarten
12 was employed at the A.J. Shaffer Meat Company, while you were
13 an inspector and he was an employee, that he offered and you
14 accepted from him money?

15 A I never accepted nothing.

16 Q Isn't it a fact, sir, that you told Mr. Lustgarten
17 that you were not going to risk your job for a lousy \$10
18 and that you wanted to see the boss; you wanted more?

19 A No, I didn't say it that way, no.

20 Q What did you say, sir?

21 A I don't jeopardize my job for no money.

22 Q Mr. Lustgarten did offer you money?

23 A I just don't remember.

24 MR. LEVITES: No further questions of this witness.

25 THE COURT: All right.

1 rg/lf/143 Benedetto-Redirect

2 MR. GALLAGHER: Just one or two, sir.

3 THE COURT: Of course.

4 REDIRECT EXAMINATION

5 BY MR. GALLAGHER:

6 Q When certain people offered you money and you
7 reported that offer to Mr. Hilburg, did they come up to
8 you and say, "Carl, here is \$20, turn your back," or did they
9 more or less in a veiled way tell you, "If you cooperate with
10 us, we will take care of you."

11 A They had so many -- they had so many ways of saying
12 things like that. I didn't like to talk about it. I tried
13 to -- I like blacked them out of my mind when they talked
14 like that because I know it jeopardized my job because once
15 you go on that side you are not your own person any more.

16 Q You were asked did you even have a drink after work
17 with some of these people and some other inspectors and you
18 said no. Do you drink, sir?

19 A No.

20 Q In the letter that is I think Government's Exhibit
21 25 --

22 MR. LEVITES: Yes, counsel.

23 Q Didn't Mr. Barry in that letter say that they found
24 the veal to be adequately cleaned and controlled?

25 A Right.

1 rg/lf/144

Benedetto-Redirect

2 Q They also said that if they had any further violation:
3 they would recommend charges against you. Did they ever bring
4 any charges against you?

5 A No.

6 MR. GALLAGHER: I have no further questions, your
7 Honor.

8 THE COURT: Anything further for the witness?

9 RECROSS EXAMINATION

10 BY MR. LEVITES:

11 Q When were you suspended, sir?

12 A December 4th.

13 Q Of?

14 A '76.

15 Q Three months after this letter. In other words,
16 when you say that no other charges were ever brought against
17 you, that's not so.

18 MR. GALLAGHER: I object to that. It's already
19 been testified to why he was suspended. I think that the
20 government knows why he was suspended. If you would like,
21 I will get it from this witness. It was testified to by Mr.
22 Puchta. It had nothing to do with this letter at all.

23 MR. LEVITES: I didn't suggest it did.

24 THE COURT: No. The jury has heard all the testimony.
25 They have been most attentive, for all of which we are indebted

1 rg/lf/145

Benedetto-Recross

2 to them.

3 All right, step down, unless there is something
4 further of the witness. Step down, sir.

5 (Witness excused)

6 THE COURT: Next witness, please.

7 MR. GALLAGHER: I indicated that one came in and if
8 I might just have a few minutes, I will be ready to proceed.
9 There might be two, but I know I have one.

10 THE COURT: That goes for both sides. You may have
11 other witnesses and we are here to listen to whatever you
12 have that's proper to be received in evidence.

13 (Recess)

14 THE COURT: Next witness.

15 MR. GALLAGHER: The defense calls Arthur Scheer.

16 A R T H U R S C H E E R, called as a witness on
17 behalf of the Defendant, being first duly sworn,
18 testified as follows:

19 THE COURT: Mr. Scheer, I say this to all
20 witnesses. I am not just picking on you. Will you please
21 just keep your voice up so that those ladies and gentlemen
22 of the jury can hear every word you say?

23 THE WITNESS: Yes, sir.

24 THE COURT: Will you do that?

25 THE WITNESS: I will.

USA

IV.

Benedetto

5/10/77

76Cr1033

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6:0

CHARGE OF THE COURT

Hon. Irving Ben Cooper

THE COURT: Ladies and gentlemen of the jury:

I would be remiss if I failed at the very outset of this charge by the Court to the jury to express to each of you, and I am sure counsel on both sides join me in this, the keen satisfaction that comes to the Court and to counsel for the undivided attention that you have given this case, and that you have demonstrated from the moment that you took the oath.

It is evident that so far you have discharged your duty with fidelity. You have followed the testimony with intelligent understanding and absorbing interest. I am quite satisfied that no single fact matter relating to the factual issues in this case has escaped your attention.

You have been silent throughout and when your time comes to speak, I have every confidence that in accordance with the solemnity of your oath and the high order of your conscience, you will pronounce the justice due in this case.

Your selection was the result of great care exercised by Court and counsel. Your mission is not easy, and I warned you when you were being selected that it wouldn't be easy, and I am sure you did not expect it to be easy.

A distinguished philosopher, Albert Camus, a

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1 rqjl 2

2 Nobel Prize winner, summed it up for all of us, for you, for
3 counsel, for the judge, when he wrote that justice dies from the
4 moment it becomes a comfort, when it ceases to be a burning
5 reality, a demand upon oneself.

6 That is what I tried to convey to you during the
7 time that you were being selected. You recall I spent almost
8 three hours repeating and repeating and repeating the high
9 order of your oath, and each one of you, on the record, committed
10 yourselves to discharging your sworn obligation by taking into
11 consideration absolutely nothing other than the evidence in
12 the case and the law applicable thereto.

13 I say this with great pride, that we are indebted
14 to counsel, Mr. Levites for the government and Mr. Gallagher
15 for the defense, for their genuine concern with the interests
16 of their clients. In particular we are grateful for their
17 demonstration that a day's work well done is always a stimulating
18 experience for participants and listeners alike. They have
19 fulfilled their obligation with distinction.

20 The evidence and the law applicable to that
21 evidence is what is before you, and you will address yourselves
22 exclusively to that. Whether you like the Judge or do not
23 like the Judge, or whether you like this lawyer or like the
24 other lawyer more has not a blessed thing to do with your under-
25 taking.

rgj. 3

Let me say a word about objections from counsel that have been interposed from time to time. Please understand that under our law the lawyers not only have the right, but it is indeed their duty on the offer of certain evidence to present whatever legal objections there may be to its admission.

With these comments about counsel we take leave of t and we concern ourselves exclusively with the parties involved in this litigation, the government, otherwise known as the plaintiff, in this proceeding, and on the other side, the defendant. This is not a contest in salesmanship. It is not a battle of wits. It is not a clash of personalities. It is by law pronounced to be a conscientious search for the truth. And if you can leave this courthouse with the firm conviction that your verdict is consistent with the truth, then indeed your duty will have been done, because the only triumph in any litigated case, whether it be civil or criminal, is the triumph of the truth.

As I told you when you were being selected, every defendant, regardless of race, creed, color, age, regardless of any impediments of any kind, is entitled to a fair trial under law, and the very same legal propositions of law must be charged by the Court to the jury regardless of who the defendant is, whether he is successful or waiting for success, whether he is highly esteemed or despised, whether he

1 rgjl 4

2 is a member of a good or bad family; yes, even the avowed
3 enemy of our society, each is entitled to his day in court and
4 let justice be done according to the facts and according to
5 the law in the case. That is exactly what America stands for.

6 You do not sit here as barons of old that you and
7 I read about in school, the barons who got together and
8 by whim, favor, likes or dislikes, decided who was going to
9 be flung into jail and who went free and who got the bag of
10 gold or who was left to sift for himself in abject poverty.

11 You have no such power, any more than I have.
12 Your duty is to be the judges of the facts and apply the law to
13 the facts no matter who likes it or who does not like it, and
14 let the chips fall where they may. You are here to determine
15 the guilt or innocence of this defendant. Neither you nor I are
16 here to please or favor anyone. We have a sworn duty to per-
17 form and we must discharge it if justice is to prevail.

18 After all, it is our justice, our courthouse, for
19 black, for white, for poor, for rich, it is your burden as
20 much as my burden, and you have got to get as exercised about
21 the doing of justice as much as the judge.

22 We have reached the point where you are soon
23 to undertake your final function as jurors and here you perform
24 one of the most sacred obligations and responsibilities of
25 citizenship. You are, and make no mistake about it, as the

1 rgjl 5

2 Supreme Court of the United States has referred to you, the
3 ministers of justice. 'I told you that over and over again when
4 you were being selected,' and it wasn't a speech. It was told
5 to you with every molecule of my being, that you were not
6 going to sit here as spectators, you were going to sit here as
7 ministers of justice. And if it takes something out of you,
8 you bet it should.

9 You are to approach your duties in an attitude
10 of complete fairness, complete impartiality, and to appraise
11 the evidence calmly and deliberately, and as was emphasized
12 by me when you were being selected, without the slightest trace
13 of sympathy, bias or prejudice for or against the government
14 or the defendant, who are the only parties to this controversy.

15 Now, I learned this since a boy of ten, and you
16 think about it and apply it to yourselves, and that is to be
17 satisfied with the applause of your own conscience.

18 What I have just said is as important a part of
19 this charge by the Court as any other part. Never forget for
20 an instant that you and you alone are the sole and exclusive
21 judges of the facts. Its equivalent is found when it comes to
22 law where the judge is the sole and exclusive judge of the law.

23 You heard counsel present various legal points
24 before me and when I disagreed you heard me take a definite
25 position. If I agreed I said so. You do likewise as to the

1 rgjl 6

2 facts no matter who it suits.

3 Remember, you and only you are the judges of the
4 facts. To use the same expression that I employed while you
5 were being selected, you call them as you see them, as they come
6 across the plate. If this trial is nothing more than an idle
7 performance, well, then, heaven help us all. The consequences
8 would be a jungle, just what a lot of people would like to
9 turn it into.

10 I think it is worthwhile as American citizens
11 to reflect on the points I am about to make and that are part
12 of the law in this case. The powerful United States of America
13 comes into court and starts the contest right at the same mark
14 with the defendant. Do you know that in some countries,
15 civilized countries, when the government starts a case, and
16 before a single word of evidence is received, the govern-
17 ment is already on second base; just the very fact that the
18 government is in the courtroom. In America we say both the
19 government and the defendant start at the same spot, each
20 takes off from the same common place. So the fact that the
21 United States comes into this courtroom and levels the charge
22 on behalf of the people against this defendant now before us,
23 the government starts just where the defendant starts. It has
24 no advantage whatever. But by the same token, it is entitled
25 to no less consideration than any other litigant.

1 rgjl 7

2 This may surprise you, but a trial judge in the
3 United States District Court, unlike what you heard in the
4 state courts, has a perfect right to comment on the evidence.
5 I have the power, if I wish to exercise it, in any case, civil
6 or criminal, to say to a jury, after telling them what their
7 powers are, that in my opinion witness X that took the stand
8 was nothing but a corrupt liar and I would not believe him on
9 a stack of bibles from the floor to the ceiling. All I need to
10 add is "but you are not bound by my estimate. You are the
11 judges of the facts."

12 Or I can say of another witness, "In my opinion
13 that witness spoke the gospel truth, but you, the jury, are not
14 bound by my estimate."

15 So you see, I can tell you how I feel about the
16 facts. I can comment on them openly, distinctly pointing out,
17 however, that you and you alone are the judges of the facts.

18 I shall do no such thing. I never have. Don't
19 tell me if the judge comments on the evidence he doesn't
20 convince one, two, three jurors, and if the judge is impressive,
21 the whole panel. I don't believe that I should praise you,
22 to do you honor, order all to rise when you come in and when you
23 leave--why do I do that? As a sign of respect for the enormity
24 of the burden that you carry--I don't believe that I should
25 praise you, do you honor, speak of you as the ministers of

1 rgjl 8

2 justice and then invade the orbit of your function. To me that
3 is like talking out of both sides of one's mouth. That is your
4 responsibility and you are going to have to meet it and I have
5 no doubt that you will.

6 Remember, I have no view whatever as to the
7 guilt or innocence of this defendant. My sole purpose and
8 function is to see that both sides, and I emphasize both sides,
9 receive a fair trial according to law; that the case is decided
10 in accordance with the evidence and the law.

11 What more can a judge say than when I told you
12 when you were being selected, that the fact finding function
13 often proves more burdensome than laying down the law. I know,
14 for the greater part of my own life has been spent as a
15 fact finder.

16 Since I have the power to talk about the evidence
17 and even give you my evaluation of it, I distinctly forbid you
18 from reading into the tone of my voice or the emphasis that I
19 may apply here or there to a proposition of law how the judge
20 feels about the facts. If I wanted to tell you I would tell
21 you outright, since I have a perfect right to do it.

22 I have long fought for the proposition that if
23 you have got something you believe in you go up the front way
24 of the house, do not go sneaking around the back. So if I
25 wanted to tell you my impression of some of the evidence, I

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1 would come right up the front way, because I have the power
2 to do it.

3 I do not have to resort to innuendo or shake my
4 head or look away with a little question mark. I do not have
5 to resort to any of that. I can tell you exactly the way I
6 feel, but since I do not believe in doing it I shall refrain
7 absolutely from doing it.

8 My function is to instruct you as to the law
9 and it is our sworn duty--you remember I emphasized that while
10 you were being selected--you must under your oath apply the
11 law as I state it to you in these instructions and apply it to
12 the facts as you, the jury, find them to be. Your oath compels
13 you to apply the law regardless of your personal opinion as
14 to the wisdom or the rightness of any part of the law. You
15 are neither lawgivers nor law makers. I emphasized that too,
16 when you were being selected.

17 I speak very plainly when I tell you that your
18 oath compels you to apply the law as laid down in these in-
19 structions. It is unthinkable that a jury would do otherwise,
20 for that would be the same as a lawyer violating his oath for
21 which he could be disbarred or a judge violating his oath, for
22 which he could be removed from judicial office. You must never
23 forget that you sit here as American ministers of justice,
24 compelled by your oath and your conscience to determine the
25

1 rgjl 10

2 guilt or innocence of this defendant, based exclusively on the
3 trial record before you.

4 What do we mean by the total trial record? We
5 mean the sworn testimony, the exhibits, the stipulations
6 entered into by both sides--everything that took place before
7 you, excluding, of course, what was found to be inadmissible,
8 and the instructions of the Court.

9 Now, with regard to any fact matter, it is
10 your recollection and yours alone, as I have already told you,
11 not what counsel remember or anything that I may say or com-
12 ment on. Anything that counsel either for the government or
13 for the defense may have said with respect to matters in
14 evidence, whether during the trial or in a question or in an
15 argument, or in summation, is not to be substituted for your
16 own recollection of the evidence. And so anything that I may
17 refer to. If my recollection does not accord with yours,
18 your recollection prevails. Your recollection is paramount.

19 Before we consider the charges lodged against
20 this defendant and what is required to sustain each charge
21 against him there are certain preliminary observations that are
22 in order, certain principles of law that are applicable to
23 every criminal case, and to almost every one of them I referred
24 at the time of your selection as jurors. Such is human nature
25 that people apply the term "boilerplate" with a gesture of

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"big deal," "easy": They apply that term to the fundamental principles of law which have been hammered out by blood and sweat, and are a part, and a glorious part, of our country's judicial history. They are not "boilerplate" to me. I have said them hundreds of times and on each occasion I regard myself privileged to pronounce these sacred propositions of law.

One of them is that an indictment is merely an accusation, a charge. It is a method by which persons accused of crimes are brought into court and their guilt or innocence is determined by a trial jury, such as you are. It is no evidence whatever of guilt of a defendant, and you will not give any weight whatsoever to the fact that a criminal charge has been returned against this defendant.

He has pleaded not guilty. He had a perfect right to plead not guilty, and the government under our law has the burden of proving guilt beyond a reasonable doubt, which I shall define shortly, as I shall other terms that I use.

We say that under our law the government has the burden of proving each charge, each count against a defendant and proving each count as to the defendant beyond a reasonable doubt.

When I say that, that does not mean to imply that I think the government has not done so, or that the government has succeeded. I have got to lay down these principles of law

1 rgjl 12

2 firmly and you the jury apply them to the facts as you find
3 the facts to be. After all, ladies and gentlemen of the jury,
4 what does the word instruction by the judge mean? The law
5 says that the judge has to instruct you. It does not mean to
6 give you some phraseology and some legal terms which fall on
7 your ears for the first time and leave you troubled and un-
8 certain. Not at all. It means teach the jury, somehow convey
9 to the jury the essence, the substance, the purport and the
10 directive of each proposition of law applicable in the case.

11 Just contemplate the glory of our law when it
12 comes to the presumption of innocence, which I mentioned with
13 a great deal of emphasis while you were being selected. I
14 told you then and I tell you again that the burden is upon the
15 government to prove a person guilty and to prove that person
16 guilty beyond a reasonable doubt, and that burden never shifts
17 from the government to the defendant. The government has to
18 bear that burden throughout the entire trial, from beginning
19 to end, from start to finish. It is our law that a defendant
20 does not have to prove his innocence. On the contrary, the de-
21 fendant is presumed to be innocent of the accusations contained
22 in the indictment. This goes back to the time when men were
23 put on the rack, tormented and tortured and made to give
24 utterances that condemned them to death.

25 And so the very purport and the very sinew of

1 rgjl 13

2 the Constitution of the United States in essence is this, that
3 based on the history of mankind, no man shall be made to testify
4 against himself, no man shall have to prove his innocence.

5 If you have something against a man of the nature of a criminal
6 charge, then you prove it, and prove it beyond a reasonable
7 doubt. If that is not the glory of the civilized world, tell
8 me what is. The fact that it is not upheld and glorified and
9 honored by those who have permission to honor it, and to make
10 it available every day, a tangible concept translated into
11 living performance, it is not my fault. But that is the law.

12 This presumption of innocence is a protective shield which covers
13 a defendant. It is in his favor right now as I talk to you.
14 At this very moment our law says that that shield of the
15 presumption of innocence surrounds this defendant during the
16 course of the entire trial. It even continues to shield him
17 when you go in to deliberate.

18 It is removed, this presumption of innocence,
19 this shield, only when you the jurors declare that the guilt
20 of this defendant has been established beyond a reasonable
21 doubt. Then that protective shield has been pierced and it
22 falls away from the defendant and it no longer affords him
23 protection.

24 The presumption of innocence is sufficient to
25 acquit a defendant of the crime or crimes charged against him

1 rgjl 14

2 unless it is overcome by evidence that satisfies your mind
3 beyond a reasonable doubt of his guilt, and unless you are so
4 satisfied, it is your sworn duty to declare the defendant not
5 guilty.

6 If, on the other hand, you do not have a reason-
7 able doubt as to his guilt, it is your sworn obligation to
8 find the defendant guilty.

9 Let's go to reasonable doubt. There is no
10 mystery about it. An intelligent high school student can get
11 the full significance. What does law mean by reasonable doubt?

12 How much evidence does the government have to
13 place before the jury in any criminal case? Must it be evidence
14 beyond all possible doubt? No. Absolutely not. The words
15 are "reasonable doubt," and they mean that there is a doubt
16 founded in reason, not imaginary, but founded in reason and
17 arising out of the nature of the evidence in the case or the
18 lack of evidence in the case. It means a doubt which a reasonable
19 person has after carefully weighing all the evidence. It means
20 a doubt that is substantial and not shadowy. A reasonable doubt
21 is a fair doubt, a doubt which appeals to your reason, your
22 judgment, your common sense, your understanding and arising
23 from the state of the evidence. A reasonable doubt is a doubt
24 that would cause you to hesitate to act in important matters in
25 your own private lives.

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A defendant is not to be convicted on suspicion conjecture or even impressive evidence, which does not rise to the dignity of significant persuasiveness. Reasonable doubt is not caprice, whim, speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant or a desire to uphold the government. If after a careful and impartial consideration of all the evidence in the case from start to finish you can candidly and honestly say that you are not satisfied of the guilt of the defendant and that you do not have an abiding conviction of his guilt which amounts to a moral certainty, then you have a reasonable doubt and in that circumstance it is your sworn duty to acquit.

On the other hand, if after such a fair and impartial consideration you can candidly and honestly say that you are satisfied of the guilt of the defendant, that you do have an abiding conviction of his guilt which amounts to a moral certainty, I mean such a conviction or certainty as you would be willing to act upon in important and weighty matters in your own personal affairs, in your own private lives, then you have no reasonable doubt and in that circumstance it is your sworn obligation to convict.

One final word on this subject of reasonable doubt. Reasonable doubt does not mean that positive certainty

1 rgjl 16

2 or beyond all possible doubt. As I have already emphasized,
3 this is not a mathematical problem that you have got before
4 you. You are dealing with human beings, the flesh, the bone,
5 the tissue. If the rule were that you would have to be satisfied
6 beyond all possible doubt, few men, no matter how guilty they
7 might be, would ever be convicted, for it is practically im-
8 possible for a person to be absolutely and completely convinced
9 of any controverted fact which by its very nature is not
10 susceptible of mathematical certainty. And so in consequence
11 the test in a criminal case is that it is sufficient
12 if the guilt of the defendant is established beyond a reasonable
13 doubt, not beyond all possible doubt.

14 Most emphatically, you cannot and must not, and
15 this is the law, say why should we find a bribe taker guilty
16 when we know that the bribe giver is left off? For jurors to
17 engage in that kind of philosophical conflict is absolutely
18 contrary to law and you would befoul your oath if you allow
19 yourselves such indulgences. From time immemorial man fre-
20 quently has been tempted, and almost invariably succumbed to,
21 bribe giving and bribe taking. Regardless of which one starts,
22 the nefarious practice, it takes the tacit agreement of at
23 least two to consummate the unholy arrangement with the
24 ineffable multifarious and frightful consequences which engulf
25 the innocent as well as the participants.

Consider for a moment just one small byproduct of

rgjl 17

what the evidence before us in this case establishes, if believed. There was testimony that a bribe giver included the bribe cash among legitimate cash outlays, then deducted the total of such cash items when reporting income taxes, thus deducting the bribe cash as though it were a legitimate expenditure. You can see there is no end to the spread of the taint of bribery.

So it has come to pass that the law contemplates and prohibits the giving and taking of bribes and imposes serious conditions on those who seriously threaten the welfare of the commonweal by participation in such outlandish practices.

At the same time the law wisely demands that the guilt of the bribe giver, as with the bribe taker, must be established as in the case before you beyond a reasonable doubt. Since the unholy alliance between the bribe giver and bribe taker is almost invariably secret, the imperative degree of proof beyond a reasonable doubt is extremely hard to come by.

How go about releasing the imprisoned proof of guilt of each? The criminal behavior of the bribe giver is serious enough, but that of the bribe taker, when a public official, is horrifying in the extreme, for his prohibited deportment can endanger the health and welfare of the community.

And so it is that the bribe giver is encouraged to come forward and reveal the truth of the illegal combination

1 rgjl 18

2 upon the government's promise of immunity from prosecution.
3 Whether the bribe givers who testified before you spoke the
4 truth is for the jury and the jury alone to say.

5 To quote from an Appellate United States Court,
6 "It is of course entirely reasonable for Congress to decide
7 that the federal inspector, the one with the ultimate power to
8 control the products leaving the plant, and the one imbued with
9 a substantial public trust, should be treated more strictly
10 than private parties whose offers of money can be refused, who
11 do not have the final word on the produce going to the
12 market."

13 I repeat, "It is, of course, entirely reasonable
14 for Congress to decide that the federal inspector, the one
15 with the ultimate power to control the products leaving the
16 plant, and the one imbued with a substantial public trust,
17 should be treated more strictly than private parties whose
18 offers of money can be refused, who do not have the final word
19 on the produce going to the market."

20 Now let's go to the indictment. Bearing these
21 propositions of law that I have given you with every bit of
22 earnestness that I can summon, just take a look at what we
23 have here in this particular case.

24 The indictment, I should say preliminarily,
25 contains four counts, four distinct charges. Each charges

1 rgjl 18
2 this defendant separately, of course, with a violation of the
3 same law or statute. That law reads in pertinent part as
4 follows:

5 "Any inspector authorized to perform any of the
6 duties prescribed by the Federal Meat Inspection Act, who
7 shall receive or accept from any person, firm or corporation
8 engaged in commerce any benefit, money or other thing of value,
9 given with any purpose or intent whatsoever, shall be guilty
10 of a crime."

11 I misspoke so let me read it again.

12 "Any inspector authorized to perform any of the
13 duties prescribed by the Federal Meat Inspection Act who shall
14 receive or accept from any person, firm or corporation engaged
15 in commerce any gift, money or other thing of value, given with
16 any purpose or intent whatsoever, shall be" guilty of a crime.

17 What is the purpose of that act? Congress has
18 said that the Meat Inspection Act is necessary in order to pro-
19 tect the health and welfare of consumers. In part, the statutory
20 purpose is found in these words: "Meat and meat food products
21 are an important source of the nation's total supply of food.
22 They are consumed throughout the nation and the major portion
23 thereof moves in interstate or foreign commerce. It is
24 essential in the public interest that the health and welfare
25 of consumers be protected by assuring that meat and meat food

1 rgjl 20 /

2 products distributed to them are wholesome, nonadulterated and
3 properly marked."

4 And so Congress made it a crime for a federal
5 meat inspector to receive or accept money from any person,
6 firm or a corporation engaged in interstate commerce. The
7 clear purpose of this law is to protect the public from the
8 consequences of corruption in public service. This is neces-
9 sary so that the community may have the benefit of objective
10 evaluation and unbiased judgment on the part of those who
11 participate in the making of official decisions and who have
12 power over other citizens.

13 There are three obvious dangers to the public
14 that this statute seeks to prevent. One danger is that
15 unsanitary and unwholesome meat can be sold if meat inspectors
16 are not vigilant. The second danger is that meat packers who
17 pay money to meat inspectors will receive better treatment
18 from the inspector than packers do who do not make these pay-
19 ments. Another danger is that if meat inspectors take money
20 from the people they are regulating, that might cause the
21 public to believe that other public officials are corrupt, and
22 that belief threatens the heart of our system of government.

23 It has been observed, and this is what you
24 should consider, that society deals sternly with bribery,
25 which would substitute the will of an interested person for the

1 rgjl 21

2 judgment of the public official as the controlling factor in
3 official decisions. The statute plainly proscribes such corrupt
4 interference with the normal and proper function of government
5 itself.

6 I want to read the indictment to you, not neces-
7 sarily word for word.

8 The grand jury charges:

9 1. The Federal Meat Inspection Act, enacted
10 on December 15, 1967, as Title 1 of the Wholesome Meat Act,
11 requires the Secretary of Agriculture to provide for the in-
12 spection of establishments where meat and meat food products
13 are processed. At all times relevant to this indictment,
14 the defendant Carl Benedetto was an inspector, officer and
15 employee of the United States Department of Agriculture, Meat
16 and Poultry Inspection Program, authorized to perform the duties
17 required by the Federal Meat Inspection Act of 1967.

18 3. That at all times relevant to this indict-
19 ment, Western Meat Company, Inc., located at 520 Westchester
20 Avenue, Bronx, New York, was engaged in interstate commerce and
21 was inspected by inspectors, officers, employees of the United
22 States Department of Agriculture, Meat and Poultry Inspection
23 Program, pursuant to the Federal Meat Inspection Act of 1967.

24 At all times relevant to this indictment, Plant
25 and Stern, Inc., located at 524 Westchester Avenue, was engaged

1 rgjl 22

2 in interstate commerce and was inspected by inspectors, officers
3 and employees of the United States Department of Agriculture
4 and so forth.

5 Next. At all times relevant to this indictment
6 Park Packing Corporation, located at 536 Westchester Avenue,
7 Bronx, was engaged in interstate commerce and was inspected
8 by inspectors, officers and so forth.

9 Next. At all times relevant to this indictment,
10 Eastern Meat, Inc., located at 601 Brooke Avenue, Bronx, New
11 York, was engaged in interstate commerce and was inspected by
12 inspectors, officers and employees of the United States
13 Department of Agriculture.

14 Now, that's the introduction. Now comes the
15 charge.

16 The grand jury further charges during the
17 approximate time periods listed below, in this district,
18 the Southern District, the defendant, Carl Benedetto, unlawfully
19 willfully, knowingly did receive and accept from Western Meat
20 Company, Inc., money and other things of value, that is
21 approximately \$20 weekly.

22 You will have a copy of this indictment which
23 I will send into the juryroom. I see no need to read you all
24 the dates when he is alleged to have accepted money from
25 Western Meat Company.

1 rgjl 23

2 What's the second count? That he did the same
3 thing with regard to Plaut and Stern. \$25 a week and there
4 are the dates listed when he is alleged to have taken that
5 money from Plaut and Stern.

6 Now we come to Count 3. That charges him with
7 doing the same thing, unlawfully, willfully and knowingly
8 did receive and accept from Park Packing Corporation money
9 and other things of value, that is approximately \$15 to \$25
10 weekly. They say that the period is from March 3, 1974 up to
11 and including July 20, 1974.

12 What's the last count, the last charge? It is
13 that the grand jury charged against this defendant that he
14 unlawfully, willfully and knowingly--you see, the words are
15 repeated, because they are separate crimes, the same violation.
16 This one deals, the fourth count, with knowingly, willfully,
17 unlawfully receiving and accepting from Eastern Meat, Inc.,
18 money and other things of value, that is approximately \$25
19 weekly from July 21st through August 30, 1974.

20 It is simple to read. There is nothing compli-
21 cated about it. What must the government prove beyond a reason-
22 able doubt with regard to each one of these charges? It must
23 prove beyond a reasonable doubt, one, that this defendant was
24 an inspector with the United States Department of Agriculture.
25 I don't think you will have much difficulty with that because

2 there is a stipulation. That is not denied, but no matter
3 how many stipulations, you, the jury, must be satisfied beyond
4 a reasonable doubt as to each element, or factor.

5 And what's the second thing that must be proven
6 beyond a reasonable doubt? You must find that the person, firm
7 or corporation alleged to have given the money to this defendant
8 was engaged in interstate commerce, and that its meat was in-
9 spected by inspectors of the United States Department of Agri-
10 culture. There is no contest on that either, so you won't
11 have much trouble with that.

12 What's the third element that must be established
13 beyond a reasonable doubt? You must find that Mr. Benedetto
14 accepted money from the person, firm or corporation--you must
15 find that he accepted the money in connection with or arising
16 from his official duty. The purpose or intent with which the
17 money was given and with which it was accepted is not relevant
18 to a finding of guilt. If he was an inspector at the time and
19 if the company was engaged in interstate commerce, and if he
20 took money, no matter for what purpose, the taking of the
21 money under this section of law, if a jury is convinced of it
22 beyond a reasonable doubt, establishes the guilt required by
23 law.

24 (Continued on next page.)
25

rgrm 1 25

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2 Let me pause for a while. There are various
3 sections of bribe taking. There is no charge here
4 that this defendant looked away when he should have been
5 looking and getting it corrected. There is no charge here
6 that he undertook to avoid the performance of a duty. But
7 that does not make the charge final. He is charged
8 under that section of the law that says that the mere taking
9 of money without looking away, without doing anything
10 corrupt or improper other than taking the money, the very
11 taking of the money constitutes the offense.

12 The law says that it is a crime for an inspector
13 to accept money if it is given for any purpose or intent
14 whatsoever. If an inspector accepts money in connection with
15 his official duty, it does not make any difference what the
16 purpose was, or what was in his mind or in the giver's mind.
17 Money accepted by an inspector in connection with his
18 official duties from the company he was inspecting is suffi-
19 cient to establish the crime charged.

20 It is not a defense that the defendant was not
21 influenced in his work and would have inspected just the
22 same whether he took money or not. It makes no difference
23 whatever. It makes no difference that he was a good or
24 efficient inspector and received commendations for his work.
25 If he took money knowing he was taking it, and took it in

1 rgrm 2

2 connection with his work as an inspector at the meat plants
3 he was officially assigned to inspect, then he is guilty,
4 provided, of course, the evidence satisfies you beyond a
5 reasonable doubt.

6 What is the fourth element that must be estab-
7 lished beyond a reasonable doubt? You must find that the
8 inspector received the money knowingly and wilfully; that
9 is, he knew what he was doing when he took it and he did not
10 take it merely by accident or mistake or misunderstanding as
11 to what he was doing.

12 Can you bear with me for another ten, fifteen
13 minutes, possibly longer? I mean, do you want a recess?

14 The exact dates when the money was accented and
15 the exact amounts are not critical. For example, if the
16 indictment charges \$25 and he actually received \$50, or
17 vice versa, or if he received \$2, the amount does not decide
18 the issue.

19 Don't you see, the law is not the ass that so
20 many people are so ready to denounce. They know the law knows
21 human nature is such that when you start taking, even though
22 you do nothing for it, then the next step is to take for
23 doing something about it. That is as old as man. It does
24 not matter if he did not take money every day of the week
25 or every week of the month or if they did not follow one

rgm 3

week after another. If he took money within a date that is a reasonably fixed date, a date that is not far from actuality, then it is sufficient.

Now, what does the law mean by the words "knowingly and wilfully?" Well, I think that is all self-evident, but I have got to charge it. What does the law mean by those words? It means pretty much what your common sense tells you the words "knowingly and wilfully" would stand for.

In considering each of these four counts you must determine whether the government has proven beyond a reasonable doubt that this defendant acted knowingly and wilfully.

The words "knowingly and wilfully" just simply mean this: That the government does not have to show that this defendant knew he was breaking a particular law before he can be convicted of a crime. They do not mean that the government has to show that Mr. Benedetto intended to profit at the expense of the government or any other person, nor do they have anything to do with Mr. Benedetto's personal or private reasons for violating the statute, for if after considering all the evidence in accordance with my instructions to you, you come to the conclusion that he violated the statute, in that event his personal or private reasons for violating the statute are absolutely of no consequence

1 rgrm 4

2 so far as his guilt is concerned.

3 An act is done knowingly if it is done volun-
4 tarily and purposely and not because of mistake, accident,
5 neglect or some other innocent reason. An act is done
6 wilfully if it is done knowingly and deliberately, and with
7 an evil motive or purpose. Unlawfully means contrary to
8 law. Hence to do an act unlawfully means to do something
9 contrary to law.

10 In essence, then, the phrase knowingly, wilfully
11 and unlawfully means doing something in a voluntary and
12 deliberate fashion. That is all there is to it.

13 The intent to take it, that must be proved
14 beyond a reasonable doubt. That is, that he intended to
15 take it and did take it.

16 I asked you whether you would like a short recess.
17 Why don't you take a few minutes.

18 (Recess)

19 THE COURT: You do not know what is coming next
20 and that element of unexpectedness helps sustain me.

21 You know, I once heard the late Mr. James Farley
22 at a public gathering tell of the occasion when, in connection
23 with a celebrated event, he was toward the center of the
24 third dais at the Waldorf Astoria and next to him -- on one
25 side of him, rather, was a Chinese who was writing notes.

1 rgrm 5

2 Mr. Farley tried to be friendly, he was a very friendly and
3 outspoken man, but the Chinaman just nodded and seemed to
4 be disinterested, so Mr. Farley concentrated on the person
5 on the other side and continued to engage in conversation
6 and felt that was the best, to leave the Chinaman alone.

7 He was him make Chinese symbols and lo and
8 behold, when the time came for speakers, who was the main
9 speaker, the Chinaman. Up he gets and down he goes to the
10 podium and he delivers a speech that floored everybody. For
11 40, 45 minutes, there wasn't a murmur. A vocabulary that
12 was astounding. The beauty of expression, the gestures,
13 the earnestness, the devotion, the dedication to his subject
14 kept everybody enthralled.

15 As he left the podium to go back to his seat,
16 everyone is touching him and grabbing him and telling him
17 what a great guy he is and they are continuing to applaud
18 thunderously and finally gets to his chair and Mr. Farley,
19 in all his height, about 6'2" or 6'3", is standing at the
20 Chinaman's vacant chair to steady it as a sign of respect.
21 And as the Chinaman sat down -- yes, I forgot to tell you,
22 that while they were eating soup, that's when Mr. Farley
23 began the conversation, and he spoke to him this way: "You
24 likey soupy: "

25 That is what brought about the reaction. I

30)

rgrm 6

1 forgot the main point. But as he began to sit down, the
2 Chinaman looked up at him -- he said, "You likey speechy?"

3 Now relax, because I haven't got much more to go

4 I want to talk to you about circumstantial
5 evidence. I am looking at you right now. That is direct
6 evidence. I see you with my own eyes.

7 Suppose when you left the house this morning,
8 and this is an example that judges use very often -- suppose
9 you saw it really was nice and sunny, the way it was last
10 Sunday, enjoyable in every way, and as you sat here, and
11 assume that you could not look out the windows, there were
12 no windows here so you could not tell the weather, but
13 assume that someone came in here and sat down and you saw
14 that that person was dripping wet and at his feet there was
15 a puddle, really, formed. Well, you did not see the rain,
16 but you would have a right to conclude by circumstantial
17 evidence that it has been raining since you came to court.
18 If you saw the rain with your own eyes, that is direct
19 evidence. If you saw the example that I gave you, if you
20 understood it and noted it, you could also come to the
21 conclusion that it has been raining. That is all there is
22 to circumstantial evidence; but let me read you the heavy
23 language of the law. "Proof that is offered of objective
24 facts and circumstances, in which one in terms of common
25

1 rgrm 7

2 experience can rationally and logically conclude the
3 ultimate fact, is circumstantial evidence."

4 Now, I am not content with giving you that,
5 as you noticed, I have not done it with regard to any propo-
6 sitions of law. I have given you the law, but I have tried
7 to explain it to you by example and the combination ought
8 to bring it home to you.

9 This is important. If circumstantial evidence
10 is believed, it is of no less value than direct evidence.
11 There is no law that says you can only convict on direct
12 evidence. The law, to the contrary, says you can convict
13 on direct and circumstantial or circumstantial being most
14 of the total proof and little direct evidence. That is up
15 to you, but both are evidence and both can be weighed,
16 assessed and determined. Regardless of the type of evidence,
17 direct or circumstantial, the only requirement is that the
18 totality of the proof, circumstantial or direct, or all of
19 one or all of the other must be beyond a reasonable doubt.
20 as I have defined reasonable doubt to you. Reasonable doubt,
21 not beyond all possible doubt. I made that distinction.

22 Now let's talk about similar acts. What has the
23 law to say on that score? You heard a great deal -- some
24 testimony, rather, with regard to similar acts. That means
25 acts alleged to have been committed by this defendant, but

1 rgrm 8

2 not within the time period embraced in the indictment, but
3 of a similar nature. That is that he took money on other
4 occasions. Why does the law allow that to be done? It was
5 received into evidence. I think I can make you understand,
6 if you will listen to me with the care that you have up to
7 this moment. The law simply says, "Acts and conduct similar
8 to those charged in the indictment, if you so find, may be
9 considered circumstantial evidence on the issue of this
10 defendant's criminal knowledge, intent, plan and preparation
11 with respect to the charges embraced in the indictment."
12 It goes to his intent, and that is the only reason it is
13 received. It is not received to show that he is a person
14 of bad character. It is received, I repeat, and may be
15 considered by you only on the issues of criminal intent of
16 the defendant, or knowledge, or plan, or preparation with
17 regard to those charges that are set forth in the indictment.

18 It is not received to show that if he committed
19 illegal acts before, he must have done it with regard to the
20 acts charged. Not at all. It is additional evidence;
21 that is all its purpose is, these similar acts. It is
22 additional evidence going to the intent, the plan, the purpose
23 of the defendant with respect to the acts charged in the
24 indictment.

25 Have I put that over? Does anybody have any

33

1 rgrm 9

2 questions? Don't be afraid. That is what we are here for.
3 You are the ones who have got to apply the law. I may know
4 it and not be able to tell it to you. That does not do you
5 any good.

6 Did you get it? Would you nod your head and
7 indicate to me that you have? Thank you.

8 Now, the defendant took the stand and testified.
9 I want to talk to you about that, but before I do let me
10 say something about what was said almost the last minute
11 here in summation, and that is about witnesses who are
12 equally available and were not called to the stand. Please
13 do not draw any inference against either side because
14 additional witnesses were not called. You are not to hold
15 it against either side because evidence may become cumulative
16 and there is no need for cumulative evidence. You just deal
17 with what is before you, just like you ladies in particular,
18 making a dress or making a suit. You have got a pattern,
19 you have got so much cloth, you have all that goes with the
20 making of the garment, you have no right to run outside and
21 get an extra piece of lining or an extra button. You deal
22 with what you have got. That's it.

23 Even when you played games as children, do you
24 remember certain pieces had a certain value. If you can
25 move this from one spot to another, you get 25 points. You

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rgrm 10

1 have got to deal with those cards that you hold, not those
2 cards you wish you had. You cannot say it is not 25 points,
3 it is only 10, or it is 50 points and not 25 points, if you
4 want to play the game on the level. So you deal with the
5 evidence in this case with what you have got and do not
6 start this business of speculating. Why didn't they call
7 this one? The answer is the judge told you to disregard
8 that. Do not let that enter your mind. That's the end of
9 that.
10

11 It would be improper, it would be contrary to
12 your oath to go against what the judge has instructed you
13 as the law.

14 I come now to what the law has to say with
15 regard to a defendant, any defendant who takes the stand at
16 his trial. The law permits a defendant at his own request
17 to testify in his own behalf. I should tell you, and I
18 think I told it to you possibly when you were being selected,
19 that if a defendant chooses not to take the stand and chooses
20 not to give any evidence in his behalf, he has a perfect
21 right to do so and no jury has the right under the law to
22 hold it against him, and if any jury did that the jury would
23 be doing an illegal act. There is no law that says a defend-
24 ant must take the stand, or offer any proof, and not for an
25 instant can it be held against him, but in this case the

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1 defendant did take the stand, he did testify, and the law,
2 therefore, has something to say with regard to a defendant
3 who chooses to testify. His testimony is before you. You
4 must determine how far it is credible or believable. The
5 deep personal interest which a defendant has in the outcome
6 of his case should be considered in determining the credi-
7 bility or believability of his testimony. You are instructed
8 as a matter of law that the interest of a witness creates
9 a motive for false testimony; that the greater the interest,
10 the stronger is the temptation, and that the interest of a
11 defendant is of the character possessed by no other witness
12 and is therefore a matter which may seriously affect the
13 believability that should be given to his testimony. While
14 this important warning must be kept in mind as to the
15 credibility or believability of a defendant's testimony, it
16 does not necessarily follow that his testimony is auto-
17 matically unworthy of acceptance.

18
19 I should think, ladies and gentlemen of the jury,
20 that the biggest issue before you is to determine the
21 credibility, the believability; that you are going to have
22 to determine the credibility, in other words, or believ-
23 ability of each witness who testifies. You will consider
24 the bias or interest of the witness, his candor, the
25 intelligence as you observed it, the extent to which it has

1 rgrm 12

2 been corroborated or contradicted, whether there has been
3 any change in the testimony and so on.

4 If you think a witness has lied, you can ignore
5 the testimony completely of that witness. But a witness may
6 be mistaken as to a part and accurate as to a part and you
7 will have to choose which part of which witness' testimony
8 you believe. In sizing the witnesses up in your search for
9 the truth, be guided by your plain, every day common sense.
10 And therein lies your strength. You saw each witness, you
11 observed the manner of his giving testimony. Out of the
12 welter of testimony you are called upon to determine the
13 factual issues in the case. Thus upon all the evidence you,
14 the jury, are to resolve the conflict.

15 To acquit the defendant you need not find, I
16 repeat, that any witness against him has lied. The test
17 always is are you satisfied beyond a reasonable doubt from
18 the entire trial record, in accordance with the Court's
19 instructions, of the guilt of this defendant beyond a
20 reasonable doubt -- guilt beyond a reasonable doubt. If
21 upon a cautious and careful consideration you are satisfied
22 that the witnesses have given a truthful version and the
23 government has sustained its burden of proof beyond a
24 reasonable doubt, in all of the respects as outlined in my
25 instructions, then you have sufficient proof on which to

3.
1 rgrm 13

2 bring in a verdict of guilty. Otherwise the defendant is
3 entitled to an acquittal.

4 Ask yourselves as to each witness how did his
5 testimony impress me? What degree of credit you should
6 give the witness' testimony should be determined by his
7 conduct, his manner of testifying, his relation to the
8 controversy, his bias or impartiality and the reasonableness
9 of his statements. Is the witness interested in the outcome
10 of the case? Is there a motive to testify falsely? Was it
11 shown to exist? Was the witness mistaken? Was he correct?
12 In other words, what you try to do, to use the vernacular,
13 is to size up a person just as you would in any important
14 matter that you are undertaking to determine, whether or not
15 the person you are dealing with is truthful, candid and
16 straightforward.

17 A witness may be discredited or impeached by
18 contradictory evidence that at some other time he said
19 something else, or he failed to do or say something which is
20 inconsistent with his present testimony. The testimony of
21 any witness whose self-interest is regarded convincing to
22 you is to be considered with great caution and weighed with
23 great care. You should consider the witness' intelligence,
24 motive, state of mind, demeanor while on the stand. You
25 should consider his candor or lack of candor, his possible

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rgrm 14

bias, his means of information and the accuracy of his recollection.

If you believe that any witness has been impeached and thus discredited, it is your exclusive province to give that witness' testimony such credibility as you think it deserves. Your determination of the credibility of a witness very largely depends upon the impression he made upon you and the conviction with which he testified; that is, the way he testified. Did it come across to you? Did it impress you? Did it touch you? Did it affect you? That is for you to consider, not how that witness impresses any of the rest of us.

The fact that a witness is an official or an employee of the government does not by itself mean that you should give greater or special credit to his testimony. The testimony of any such witness should be weighed and scrutinized in the same manner as any other witness who has testified in this case. You judge their testimony in the same way, taking into account interest or any factor which may have influenced them to color or fabricate their testimony.

Examine with care for the clean or impure motive that prompts the testimony of a witness. Ask yourselves after each witness has testified what was his motive; did the

1 rgrm 15

2 witness commit perjury in order to get the defendant con-
3 victed or was his testimony influenced by an unflinching
4 desire to tell the truth? Ask yourselves whether the
5 testimony was induced because of a dislike of the defendant
6 or for revenge, or for any other impure motive. Does the
7 trial record point to a wrongful reason which prompted the
8 testimony or do you believe that a witness testified as he
9 knew the facts to be and observed the sanctity of his oath?
10 All of this is for you and you alone to evaluate.

11 So you see, a study of the motive for testimony
12 may be a strong indicator, if not a conclusive one, as to
13 where truth lies and where falsity exists.

14 The chief government witnesses were employees
15 or officers of corporations that were admitted accomplices
16 in the crimes charged, and in other crimes of giving money
17 to government employees. In evaluating their testimony you
18 should view it with caution and scrutinize it carefully.
19 Their association with criminal activities may show defects
20 in their own character which may make them more likely to
21 lie. They may also be seeking to curry favor with the
22 government to receive favorable treatment to avoid their own
23 prosecution and punishment of their corporations because the
24 government could put them out of business by taking away
25 their licenses and their inspection number. There is evidence

40

1 rgrm 16

2 that they individually were not criminally prosecuted.

3 Now, there is nothing wrong, absolutely nothing
4 wrong with the government using such testimony, and whether
5 you like it or not is not the question. You are not trying
6 the government for the way it handled the witnesses. Just
7 consider what I have just said on the issue of credibility,
8 of believability of those witnesses who signed the statements
9 relating to non-prosecution. You might also take into
10 consideration the fact that under certain circumstances
11 evidence can only be elicited as I have already pointed out
12 from the bribe giver, or the evidence against the bribe
13 taker will never, but never come to light.

14 Whatever may be, whatever they may be, these
15 witnesses, it would be wrong to say that we did not have
16 before us persons who did give the bribe. Well, you judge
17 them under all the circumstances. How did they impress you?
18 Were they bold about it, indifferent, shameless, contrite;
19 how did they come across? Above all, you take the total of
20 the evidence and you say, "This is what the judge says we
21 have got to consider. We have got to evaluate it and if
22 after evaluating it we find that the sum total, putting it
23 all together, shows guilt, we have got to under our oath
24 convict. If, on the other hand, we have a reasonable doubt
25 we must under our oath acquit."

rgrm 17

1
2 Don't you see, in a great number of cases the
3 government is hard put to it, but that does not justify,
4 that does not say just because the government has a tough
5 time getting the proof, that therefore you should convict.
6 No, you convict only if the testimony, the total testimony
7 convinces you beyond a reasonable doubt of the guilt of a
8 defendant. You might bear in mind that even in far more
9 serious types of crimes than the one before you, there are
10 informers, there are those from the gutter, there are those
11 who never came face to face with a moral principal and
12 recognized it as such, yet such persons may well be called
13 to the stand, with all the limitations that they possess.
14 They may, nevertheless, with respect to certain items
15 involved in the trial of a particular case, speak the truth.
16 In every such instance it is for the jury to determine the
17 credibility or believability of each witness. You ask your-
18 selves which of these witnesses, which of these bribe givers
19 was going to take the chance of a prosecution for perjury
20 and a prosecution for bribe giving if he dared to testify
21 falsely before you. That is on the other side of the coin.

22 So the issue is always for the fact-finders,
23 which you are, when taking into consideration all the
24 testimony from slightly or deeply polluted sources, from
25 clean sources, when you add it all up, are you convinced of

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guilt beyond a reasonable doubt. If so, your oath compels conviction. If not, your oath compels acquittal.

Now, a few words about character evidence.

There was no testimony before you, as I recall, as to reputation evidence, but there is some testimony with regard to character evidence through the testimony of persons who know the defendant who have offered some evidence respecting the high regard of the defendant for truth and integrity. You should consider evidence given under oath along with all other evidence in the case. If, however, you are satisfied beyond a reasonable doubt of the defendant's guilt, evidence of good character does not justify or excuse the offense. It is the law that evidence of a defendant's good character may justify your belief that it is improbable that a person with good moral character would wilfully commit such a crime. All of these thoughts and tests and evaluations come to you, you concerning whom no inquiry was made as to your academic degrees, your formal education or learning. Fact-finders like you, with or without formal education, are indispensable for the determination of truth, because you have lived, you have had the bitter and the sweet, you have spoken and dealt with people in all walks of life, from the members of your own family to those in the marketplace. It is that experience that enables you to delve in to the

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2 totality of the evidence adduced and come up with the verdict.

3 You and I have a right to be a little impatient
4 with those who say, I have learning and that's the open
5 sesame, that's all that I wish. In its place it has value, of
6 course, but not by a long shot is it all that belongs to
7 an all-around human being. Character is equally important,
8 every bit as important and a knowledge of life's experiences
9 is every bit as important as formal education.

10 A great philosopher, and I think I already
11 pointed this out to you, said that books are a bloodless
12 substitute for life, and Mr. Justice Oliver Wendell Holmes,
13 I think I also pointed out to you, said that the life of the
14 law is not logic, it is experience. That's what we are
15 counting on now. That's the key, not some key of honor for
16 academic achievement.

17 Now, ladies and gentlemen, in thanking you for
18 your rapt attention, which is another compliment to you for
19 your industry and your deep sense of caring, without which
20 there can never be any justice -- you have got to care about
21 it. You have got to care deeply about it. You can't say,
22 the hell with it, it is just one case out of thousands.
23 Nuts. That would be unworthy. That would be befouling of
24 your oath. That would be a viper who crept among the clean.

25 So I bring this charge to a conclusion and I

44

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1 point out to you that when we lay down as law the letter or
2 the superiority of the law, that every defendant on trial
3 is presumed to be innocent until the government fulfills
4 its obligation of proving him guilty beyond a reasonable
5 doubt, and all those other propositions of law that I have
6 tried to emphasize and to delineate for you, each one
7 equally sacred, we must not lose sight of the rights
8 of the other party to this litigation, the plaintiff, the
9 government. We must bear in mind, and I so charge you an
10 equally vital concept of justice, defined in classic fashion
11 by the Supreme Court of the United States, and therefore
12 the law of the land: "Justice, though due to the accused,
13 is due to the accuser also."

14
15 If you find the law has not been violated you
16 should not hesitate for any reason to return a verdict of
17 not guilty. That would be your sworn obligation. On the
18 other hand, if you should find that the law has been
19 violated as charged, you should not hesitate because of
20 sympathy or any other reason to render a verdict of guilty
21 because, in your concept of what is required here, that
22 would be the justice of the case if you so decide. And if
23 that is your decision, it would also constitute a clear
24 warning that a crime of this character may not be committed
25 with impunity. The public is entitled to be assured of this.

40

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1 All of these things that I have mentioned follow only if,
2 as and when you are satisfied beyond a reasonable doubt
3 as to each of the elements which I told you the law makes
4 imperative in order to sustain each of the counts set forth
5 in the indictment.
6

7 There are four counts. Each one of them must
8 be considered separately, as though it were the only one
9 before you. If you should find none of them is sustained,
10 you say not guilty on each. If you find all of them are
11 sustained, you will so pronounce it, Mr. Foreman. If you
12 find that there is guilt on one or more and not on others,
13 you so pronounce it. Each is a separate criminal charge
14 and each requires a separate verdict.

15 Proof beyond a reasonable doubt, not proof
16 beyond all possible doubt. You hold the scales, you
17 measure the weight of the evidence and ask yourselves with
18 regard to each of the four elements that I have defined for
19 you whether you are satisfied as to each beyond a reasonable
20 doubt, not beyond all possible doubt.

21 Under your oath as jurors you cannot and must
22 not allow a consideration of the punishment which may be
23 inflicted upon a defendant if he is convicted to influence
24 your verdict in any way. If you did that you would clearly
25 violate your own oath. That duty rests exclusively with the

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judge who, upon the basis of a full official report dealing with the defendant's general life pattern and behavior, has the duty to impose the sentence. That has nothing to do with you. Your burden is heavy enough.

Each juror is entitled to his own opinion or her own opinion. You should, however, exchange views with your fellow jurors. That is the very purpose of jury deliberation. Twelve jurors, not one, not three, not five, not eleven. You have a right to your opinion, but you must discuss it with one another. You must give each the benefit of your views, and so the law says that you must listen to the arguments of your fellow jurors, you must consult with one another and you must reach an agreement based solely and wholly on the evidence, if you can do so without violence to your own individual judgment and employ that high degree of genuine courage that you justifiably expect especially in these perilous times from others, because now you are in the seat of justice.

You should not hesitate to change an opinion which upon a consideration of all the evidence with your fellow jurors appears erroneous. However, if after carefully considering all the evidence and the arguments of your fellow jurors you consciously entertain a view that differs from others, you are not to yield your convictions simply

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2 because you are outnumbered or outweighed. The verdict of
3 the jury must be unanimous.

4 The exhibits will be gathered and sent into
5 you promptly, together with a copy of the indictment. If to
6 help you in your deliberations you wish a point or points
7 in the testimony read, please specify exactly as possible
8 just what point you wish the official court reporter to
9 locate. It is very difficult. It takes time, but it must
10 be done if you wish it and that portion that you require
11 will be read to you no matter how much effort, no matter
12 how much time is required.

13 Your oath, ladies and gentlemen of the jury,
14 sums up your duty, and that is without fear or favor to any
15 man you will well and truly try the issues between this
16 defendant and the United States of America according to the
17 evidence given to you in open court and the laws of the
18 United States. That is exactly what you swore to, what you
19 swore that you would do. I have every confidence that you
20 will fulfill your sworn obligation as American ministers
21 of justice to render a true verdict based solely and
22 exclusively on the facts and on the law in this case.

23 If the government has carried its burden in
24 accordance with the evidence and the law as to the defendant,
25 you must not flinch from your sworn duty, you must convict.

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2 But if it has failed to carry its burden, your sworn duty
3 is to acquit. And this I say with measured tones.

4 You have undoubtedly talked about justice in
5 your homes and in your daily affairs, in your comings and
6 in your goings, as is your inalienable right. The point
7 is now, each of you sits in the seat of justice. How will
8 you do? Apply your criticism of justice to yourselves.
9 Will you call them as you see them? Will you do justice
10 under oath as between the government and this defendant,
11 and do so solely on the facts and on the law, exactly what
12 you swore to do?

13 This judge has every confidence that that's
14 exactly what this jury will do.

15 If you will be good enough to keep your seats and
16 let counsel and the judge have a short conference in the
17 robing room I will be much obliged to you.

18 Mr. Court Reporter, will you join us, please.

19 (In the robing room.)

20 THE COURT: Are there any exceptions or requests
21 to charge by the government?

22 MR. LEVITES: None whatever, your
23 Honor.

24 THE COURT: Are there any exceptions or requests
25 to charge by the defendant?